

Received
Washington State Supreme Court

JAN -4 2016

Ronald R. Carpenter
Clerk

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SUPREME COURT NO. 92547-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:

ANTHONY DEWAYNE PARKER,

PETITIONER.

MOTION FOR DISCRETIONARY REVIEW

Anthony D. Parker Pro Se
#776122-J-B-12
Clallam Bay Corr. Cntr.
1830 Eagle Crest Way
Clallam Bay, WA 98326

A. IDENTITY OF PETITIONER.

Anthony D. Parker, asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. COURT OF APPEALS DECISION.

The Court of Appeals Decision entered on October 19, 2015, is in direct conflict of other lower court's opinion's as well as this court's opinion's, as held in State v. Irby; State v. Flores; State v. Green; and State v. Ponce. See COA. Decision properly attached to this motion as App. A.

C. ISSUES PRESENTED FOR REVIEW.

1). Was Parker deprived of effective assistance of counsel where counsel failed to suppress the seizure of Johanna Holliday's cell phone during the traffic stop when she was not arrested for any crime?

2). Did the State prove every element of the crime of First Degree Burglary where Parker's friend, Jennifer Prerost had let him into the house?

3). Did the State prove every element of the crime of First Degree Kidnapping where Johanna Holliday left the house willingly and was not secreted in a place where she could not be found?

4). Did the State prove every element of the crime of

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Unlawful Possession of a Firearm in the First Degree where Dominion and Control over premises and not specific item is insufficient to prove possession?

D. STATEMENT OF THE CASE.

1. Facts Pertaining to Issues Raised on Appeal

According to the Compliant for Search Warrant and Affidavit attached to this Motion as App. B, dated April 8, 2013. On April 4, 2013, at approximately 1900 hours, Officer Rauback observed Johanna Holliday and Alisia Crettol meeting with Travier Stevenson, who uses and sell Percocet pills.

Officer Rauback followed Crettol and Holliday away from the area, and coordinated with patrol officers to stop the vehicle. Detective Ryan Heffernan responded to the location of the stop and stood by while Holliday and Crettol were removed from the car and detained. Heffernan escorted holliday to a patrol vehicle and explained that he was investigating a possible drug transaction that had just occurred. Id. at 6.

Heffernan asked Holliday how many pills she had gotten from Stevenson. Holliday said she had gotten one pill from Stevenson. Heffernan asked Holliday where she had put the pill. Holliday responded "inside of her purse", which was sitting in the passenger seat of the vehicle. Without

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obtaining a "warrant to search the vehicle and remove the items" Heffernan went to the vehicle and withdrew the purse and a cell phone from the front seat of the car.

Heffernan returned with the items to Holliday and took off her hand restraints. Holliday located the pill inside of her purse and handed it over to the Detective. Heffernan showed Holliday the cell phone located on the passenger seat, which she verified was her phone, and identified the number as (360) 908-2471. Heffernan called the number, confirming the same, and **took custody** of the phone.

According to Detective Heffernan, because Holliday was cooperative throughout the interview and agreed to meet with him the following day, Holliday was not arrested for possession of a controlled substance. i,e (Percocet). 6RP 532, 534.. RP App. D.

In fact, Heffernan had no intentions on arresting Holliday for the purchase of the drugs. RP 812-14, 890, 1012. Heffernan testified that he was looking for information on Parker and used the traffic stop as a ruse to gain that information. Heffernan stated, he thought he would go through the phone with Holliday's consent once she showed up to the meeting they had agreed to. RP 812-14, 890, 1012.

On April 5, 2013, when Holliday failed to show up for the interview, detective Heffernan sought a search warrant to go into Holliday's cell phone that he had seized during the traffic stop. See Complaint No. 20130160 Id. at 7 App. B.

Even though Holliday was not stopped for prostitution or had admitted that she was prostituting, the affidavit to search and seize any information on the phone was based on insufficient probable cause that human trafficking and prostitution would be found in the cell phone.

Subsequent to the illegal seizure of the cell phone, Detective Heffernan was able to go into the phone where he found evidence of Holliday prostituting through backpage.com, and information on Parker allegedly acting as her pimp through the text messages and e-mails that he sent to her.

In order to locate Holliday, Detective Heffernan and the Bremerton Police Department orchestrated a sting operation posing as customers on backpage.com. When Holliday answered the ad she was arrested at the Oyster Bay Motel for prostitution. RP 538-540, 541-543, 814-818, 891.

During the arrest Heffernan seized Holliday's second cell phone, where he obtained a warrant to search and found more evidence of prostitution with Parker acting as her

pimp through e-mails and text messages.

After Holliday's arrest at the Oyster Bay Motel, she then gave a recorded statement, alleging that on one occasion through the months of January thru February 2013, Parker had committed Burglary in the First Degree, Assault in the Second Degree, and Kidnapping in the First Degree. RP _____. Holliday also alleged that Parker was in possession of a firearm in the month of April 2013. It was because of this statement to the police that Detective Heffernan sought another search warrant to arrest Parker for Human Trafficking and Promoting Prostitution. See App. C.

The warrant specifically stated that the body of Parker was to be arrested at the location established and to recover a firearm. Parker was arrested and the gun was located however, the police went beyond the scope of the warrant and seized Parker's cell phone, where they uncovered e-mails and text messages to and from Holliday in relation to prostitution. RP 993.

During pre-trial 3.5 and 3.6 hearings, when the State sought to admit the evidence taken from Holliday's first cell phone that was seized during the traffic stop, defense counsel should have moved to suppress that evidence because the officer had no authority to seize the phone.

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2. Appellate Court Decision

Parker on appeal argued that he had a reasonable expectation of privacy when the State seized evidence of the e-mails, text messages, and photos, from Holliday's cell phone that was either sent by him to Holliday or sent by Holliday to him. Statement of Additional Grounds at 19-26; and Personal Restraint Petition at 12-16.

Parker also argued that counsel deprived him of his right to a fair trial when counsel failed to suppress the seizure of the cell phone taken on April 4, 2013, during the traffic stop, and the evidence taken from that phone as well as Holliday's second cell phone taken on the 12th day of April 2013, during Holliday's arrest, where she gave no consent to seize nor search her phone. Statement of Additional Grounds at 26-29; and Personal restraint Petition at 16-19. SAG App. E. PRP App. F.

In addition to the illegal search and seizure, Parker further argued that the State failed to prove that he committed first degree burglary. SAG at 7-8; Kidnapping in the first degree. SAG at 9-11; and Unlawful Possession of a Firearm in the first degree. SAG at 12-15.

The court granted Parker's petition on the illegal search and seizure and ordered a reference hearing. Appendix

A. The court of appeals ordered appointment of counsel to represent Parker at the hearing on Parker's claim that J.H.'s cell phones were illegally searched and seized. Id. at 27. The reference hearing is to include 1) a specification of all evidence on J.H.'s cell phones to which Parker's asserted privacy interest extended; 2) whether such evidence was admitted at trial; and 3) if not admitted, whether such evidence led to other evidence that was admitted at trial; 4) a specification of what evidence admitted at trial, independent of that listed in paragraphs 1 to 3, supported Parker's convictions. Id. at 28.

The court concluded that "because of Parker's threats ... sufficient evidence proves that Parker unlawfully entered or remained in the house; and because Pakrker pushed J.H. towards the door, pushed her into the back seat of his car, and sped off, the jury could have found that J.H. did not willingly leave with Parker. Rather, she did so because of the **use of force or threatened force**. Id. at 13-14; and because the police found the firearm in the house where Parker lived the State presented sufficient evidence for the jury to find beyond a reasonable doubt that Parker constructively possessed the firearm. Id. at 15.

In the matter of ineffective assistance of counsel,

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for failure to move to suppress the evidence taken from J.H.'s cell phones, the court concluded that because Hinton, 169 Wn.App. 28, (2012) was still good law Parker lacked standing to challenge the search, thus, counsel's decision not to move to suppress this evidence was objectively reasonable." Id. at 18.

E. REASONS WHY REVIEW SHOULD
BE ACCEPTED AND ARGUMENT.

BECAUSE THIS CASE INVOLVES SIGNIFICANT QUESTIONS OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS, THIS COURT SHOULD ACCEPT REVIEW.

1. Ineffective Assistance Of Counsel Deprived Parker
Of The Right To A Fair Trial Where Counsel Failed To
Suppress the Illegal Seizure Of Johanna Holliday's Cell
Phone That Was Taken During The Traffic Stop And The
Admitted Evidence Retrieved From That Cell Phone!

Both the Sixth Amendment to the United States Constitution and article 1 section 22 (amend 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings. *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012). A claim of ineffective assistance of counsel presents a mixed question of fact and law reviewed de novo." *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To establish ineffective assistance of counsel, the defendant..

must establish that his attorney's performance was deficient and the deficiency prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Deficient performance is performance falling "below an objective standard of reasonableness based on consideration of all circumstances." *State v. McFarland*, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995). The prejudice prong requires the defendant must show that counsel's errors were so serious as to deprive the defendant of a fair trial whose results are reliable. *Strickland*, 466 U.S. at 687.

In this case, the Court of Appeals reasoned that because Parker had no standing to challenge the contents of the cell phone taken during the traffic stop Parker did not suffer ineffective assistance of counsel. See App. A. at 18. This reasoning was based on the fact that *Hinton*, 169 Wn.App. 28 (2012) was still good law at the time of Parker's trial.

However, prior to the search of the cell phone, the court needed to consider the way that Holliday's cell phone was seized during the traffic stop, before it can make the determination of whether Parker did not suffer ineffective assistance of counsel. See *State v. Green*, 177 Wn.App. 332,

312 P.3d 669 (Div. 1 2013)(According to the plain text of article 1 section 7, search or seizure is improper only if it is executed without "authority of law."). Here, the police had no authority to seize Holliday's cell phone during the traffic stop. State v. Snapp, supra. When Holliday admitted to buying the drug and claimed it was in her purse which was inside of the vehicle, the police should have sought a search warrant before removing anything from the vehicle. State v. Campbell, ___ Wn.App. ___, (Div. III) (published Feb 14, 2012) (29392-1-III). To illustrate; police attempted to arrange a controlled buy of ecstasy pills from Mr. Joseph. Mr. Joseph arrived at a pre-arranged location as one of several passengers in a car. While negotiating with the informant who was trying to buy the pills, Mr. Joseph walked to and from the car, said he needed to discuss the terms of the sale with his partner, and said the pills were in the car. Ultimately Mr. Joseph left without completing the sale. Shortly after Mr. Joseph left, police stopped the car in which he was a passenger. Ms. Campbell was also a passenger in the car. Police detained all of the occupants of the car while they waited for a warrant to search the car. Police ultimately got a warrant to search the car and its contents

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and found ecstasy pills in Ms. Campbell's purse).

Campbell makes it clear that Detective Heffernan had to obtain a warrant before removing Holliday's purse and cell phone from the car. Thus, under article 1 section 7, officers have no authority of law to search a vehicle incident to arrest even if they reasonably believe or can articulate probable cause that the vehicle contains evidence of the crime of arrest. *State v. Louthan*, 175 Wn.2d 751, 287 P.3d 8 (2012). A warrantless vehicle search incident to the arrest of a recent occupant of a vehicle when it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle is not permitted under the state constitution's prohibition against disturbance of private affairs ... without authority of law. West's Art. 1, section 7; *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012).

While *Hinton*, 179 Wn.2d 862 (2014) had not issued before Parker was arrested in 2013, the *Hinton* Court addressed several cases that stood for the proposition that Parker's private affairs were protected from governmental intrusion without the authority of law. *Id.* at 868 (citing *State v. Valdez*, 167 Wash.2d 761, 772, 224 P.3d 751 (2009); *State v. Myrick*, 102 Wash.2d 506, 511, 688 P.2d 151

(emphasis added). The "authority of law" required by article 1, section 7 is a valid warrant unless the State shows that a search or seizure falls within one of the jealously guarded and carefully drawn exceptions to the warrant requirement. *State v. Miles*, 160 Wash.2d 236, 244, 156 P.3d 864 (2007); *State v. Rife*, 133 Wash.2d 140, 150-51, 943 P.2d 266 (1997).

Because Holliday was not arrested during the traffic stop, absent a warrant, there wasn't any exception to the warrant requirement. *State v. Miles*, supra. When Detective Heffernan chose to not arrest Holliday for the drugs his probable cause became void. In *Flores*, a most recent case, the appellate court addressed the issue of whether police officers have probable cause to search or seize of a non arrested individual. *State v. Flores*, 2015 WL 3915782 (Wash.App. Div. 3)(2015) The court held; where the suspect was not arrested, probable cause to search did not justify search of vehicle. "The existence of probable cause, standing alone, does not justify a warrantless search". *State v. Tibbles*, 169 Wash.2d 364, 369, 236 P.3d 885 (2010).

The State bears the burden of establishing that an exception to the search warrant requirement applies to a warrantless search. *State v. Snapp*, 174 Wash.2d 177, 187-88,

275 P.3d 289. The State must show that an exception to the warrant requirement applies by clear and convincing evidence. *State v. Garvin*, 166 Wash.2d 242, 250, 207 P.3d 1266 (2009). In this case, the State has failed to make that showing. *State v. Hinton*, 179 Wn.2d 869, 319 P.3d 9 (2014).

It is because of this failure that defense counsel should have moved to suppress the search of the vehicle, and the seizure of the cell phone. *State v. Snapp*, 174 Wn.2d 177 supra. For the Court of Appeals to reason that Parker did not suffer effective counsel due to Hinton, 169 Wn.App. 28, being good law. *Id.* at 18. The court would want us to overlook *State v. Valsez*, supra; *State v. Snapp*, supra; *State v. Louthan*, supra; *State v. Campbell*, supra; and *State v. Tibbles*, supra, as controlling authority prior to Hinton, 179 Wn.2d 869, that stood for the proposition that Parker had the right to challenge the seized cell phone taken during the traffic stop.

Although, the affidavit to search and seize evidence from Johanna Holliday's cell phone was approved by the magistrate all subsequently uncovered evidence becomes "fruit of the poisonous tree." *State v. Vanness*, 186 Wn.App. 148, 344 P.3d 713 (Div. 1. 2015).

Here, during the search of the first cell phone

taken on the 4th of April, 2013, Detective Heffernan found that Johanna Holliday was prostituting on backpage.com, and that Parker was linked to the prostitution by the e-mails and text messages sent to and from Holliday and Parker. RP 538-540, 541-543, 812-814, 890, 1012; Complaint For Search Warrant at 6-8, dated April 8th 2013; App. B.

Subsequent to the search of the first cell phone, Holliday was arrested and taken into custody for prostitution. RP 541-543, 814-821, 891. While being interrogated, Holliday gave Detective Heffernan a lengthy statement about her activities with Parker.. RP 819-821, 899-900. It was based on this arrest and interview that a warrant was issued for Parker's arrest for Human Trafficking, Promoting Prostitution, Burglary, kidnapping, Assault, and Unlawful Possession of a Firearm. RP 903-904.

Because of the above facts, Parker had argued in his PRP at 14, and SAG at 24-25, even assuming there was a warrant to search the first cell phone, the detective lacked authority to seize the phone. Citing *State v. Hinton*, 179 Wn.2d 862, supra; and *State v. Winterstein*, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009). The evidence taken from Holliday's first cell phone was the nexus to the police learning about Parker and his involvement with Holliday. It

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was also link to Parker being charged for the Stated crimes. Had the detective not seized the phone during the traffic stop he would not have known about Holliday prostituting on backpage.com or Parker's involvement at that particular time.

The fruit of the poisonous tree extends to all evidence obtained from the illegal seizure. *State v. Green*, 177 Wn.Wpp. 332, 312 P.3d 669 (2013), while the focus is on what evidence on J.H.'s cell phones Parker had a privacy interest to, the focus should also be on whether the detective had "authority to seize" the phone prior to the search. *State v. White*, 97 Wash.2d 92, 101, 640 P.2d 1061 1982)(citing *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)(Evidence directly produced by an unlawful seizure is inadmissible). *State v. Kichinko*, 26 Wn.App. 304, 310-11, 613 P.2d 792 (1980). It is the arrest itself --- not probable cause --- that constitutes the necessary authority of law to search under article 1, section 7. *State v. O'Neil*, 148 Wn.2d 564, 585-86, 62 P.3d 489 (2003); 'The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all.' *Agnello v. United States*,

269 U.S. 20, 33, 46 S.Ct. 4, 70 l.Ed. 145 (1925). The admission of evidence obtained by the illegal seizure and search was error and prejudicial to substantial right's of Mr. Parker. *State v. Hinton*, 179 Wn.2d 862, 319 P.3d 9 (2014)(citing *State v. Valdez*, 167 wash.2d 506, 511, 688 P.2d 151 (2009)). Therefore, absent a valid warrant to seize Holliday's cell phone during the traffic stop, all evidence obtained from the search of that phone must be suppressed as fruits of the poisonous tree. See *State v. Green*, 177 Wn.App. 332, 312 P.3d 669 (2013); *State v. Monaghan*, 165 Wn.App. 782, 266 P.3d 222 (2012); *State v. Valdez*, 167 Wash.2d 506, 511, 688 P.2d 151 (2009). That evidence includes; Human Trafficking, Promoting Prostitution, Burglary, Kidnapping, Assault, and Possession of a Firearm. *State v. Vanness*, 186 Wn.App. 148, 344 P.3d 713 (2015).

Because defense counsel failed to suppress the tainted evidence, Parker suffered ineffective assistance of counsel as held in *State v. Snapp*, 174 Wn.2d 177, *supra* and *State v. Hinton*, 179 Wn.2d 862 *supra*. See also *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Absent the tainted evidence the State could not prove beyond a reasonable doubt that Parker committed crime(s) charged. *Jackson v. Virginia*, 443 U.S. 307, 318, 99

S.Ct. 628, L.Ed.2d 560 (1970); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Where circumstantial evidence is at issue, like in this case at bar, without the photographs, e-mails and text messages taken from Holliday's cell phone(s), the State had no case to try. And no competent attorney would have failed to move for a 3.6 hearing to suppress that evidence, or the evidence taken from Parker's cell phone that was seized during his arrest at his home. *Strickland v. Washington*, supra. In his SAG (Statement of Additional Grounds) Parker argued that the police went beyond the scope of the search warrant executed on the 13th of April, 2013, when it seized his cell phone from the house. Id at 21-23, RP 903-904. On April 12, 2013, pursuant to the statement given by Holliday when she was arrested, Detective Heffernan obtained a search warrant for Parker's residence. RP 903. The warrant covered the search of the home for a firearm known to be in the basement, and the body of Parker. Id. Parker was arrested without incident. The police also seized paker's cell phone. RP 904. Thus violating the scope of the warrant. *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999). Ten days after the seizure of Parker's cell phone, Detective Heffernan obtained a search warrant on the 23rd of April, 2013. RP 1007. Evidence

taken from the phone consisted of backpage ad postings of Holliday soliciting money for sex. RP 993, 1007. This was admitted and shown to the jury to concrete the convictions of promoting prostitution and human trafficking. RP 1257.

Since constitutional protections are strongest in the home. U.S. Const. amend. IV; Wash. Const. art 1, section 7; *Payton v. New York*, 445, U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); Where the home receives heightened constitutional protections. *State v. Young*, 123 Wash.2d 173, 185, 867 P.2d 593 (1994), the question here is the same for Parker as it is for Holliday; whether the police had legal standing to seize Parker's cell phone when there was no evidence at that time confirming that the cell phone was involved in any illegal activity? (2) whether the scope of the warrant covered the cell phone? and (3) whether the evidence seized from the phone like Holliday's require dismissal of the entire case with prejudice due to fruits of the poisonous tree doctrine? *State v. Hinton*, supra.¹ Thus,, ineffective assistance of counsel deprived Parker of his right to a fair trial where counsel failed to suppress Holliday's cell phone that was seized without authority of law, as well as Parker's cell phone where the police went beyond the scope of the warrant, and the evidence taken from

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1. The scope of the
warrant was not
addressed by COA

their cell phones. *Strickland v. Washington*, controls.

2. Insufficient Evidence Deprived Parker Of His Right To A Fair Trial!

The Court of Appeals opined that because Parker had threatened Prerost to open the door, the jury could conclude that he entered or remained unlawfully to satisfy burglary in the first degree; and because Parker had pushed Holliday in the back the jury could conclude that Parker used force to satisfy Kidnapping in the first degree; and because Parker lived in the residence, the jury could conclude that he had dominion and control over the gun. *Id.* at COA Decision at 13, 14, and 15.

First; A lawful entry even one accompanied by nefarious intent is not by itself a burglary. *State v. Irby*, 347 P.3d 1103 (2015)(quoting *State v. Allen*, 127 Wash.App. 125, 137, 110 P.3d 849 (2005). Person who commits crime within dwelling may not be convicted of first degree burglary unless there are sufficient facts from which to infer independently that entry or remaining was unlawful, uninvited, or otherwise without consent. *State v. Collins*, 737 P.2d 1050 (1987). Here, when Prerost let Parker into the house she essentially gave consent. RP 494, 1241, SAG at 8-9. **Second;** To commit kidnapping in the first degree, a person must use or threaten to use **deadly force** RCW 19.

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9A.40.020(1); Abduct means to restrain a person by...using or threatening to use deadly force." or secreting or hiding him or her in a place where he or she is not likely to be found. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980). Here, the court's reliance on general use of force is not sufficient for first degree kidnapping. and **Third;** Constructive possession is whether a defendant had dominion and control over the item and not the premises. *State v. Ponce*, 79 Wn.App. at 654. To illustrate the defendants conviction was overturned because the jury was instructed that dominion and control over premises proved constructive possession of drugs found therein. *State v. Shumaker*, 142 Wn.App. 330 (2007). Thus, based on the above the State failed to prove the elements of the crime(s) charged. *Jackson v. Virginia*, 443 U.S. 307 (1970) controls.

F. CONCLUSION.

Based on the above, this Court should accept review for the reasons indicated in Part E and vacate with prejudice, or in the alternative remand to Kitsap County Superior Court for new trial.

Respectfully submitted,



Anthony Dewayne Parker, Pro Se
Dated this 27th day of December, 2015.

APP. A.

APPENDIX A. COURT OF APPEALS DECISION

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 OCT 19 AM 9:24

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 73667-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
ANTHONY DEWAYNE PARKER,)	UNPUBLISHED
)	
Appellant.)	FILED: <u>October 19, 2015</u>
)	

Cox, J. — Anthony Parker appeals his judgment and sentence on convictions of multiple counts of assault, human trafficking, promoting prostitution, burglary, kidnapping, unlawful possession of a firearm, witness tampering, and firearm enhancements. He fails in his burden to show that his trial counsel had actual conflicts of interest. Thus, we reject his ineffective assistance of counsel claim. Further, there is a nexus between his convictions of human trafficking and promoting prostitution and the firearm enhancements. And his statement of additional grounds for review does not warrant relief. Accordingly, we affirm the judgment and sentence in this appeal.

In the consolidated personal restraint petition, Parker asserts multiple claims. With one exception, none requires further consideration. His claim that there was an illegal search and seizure of another's cell phones that violated his

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privacy rights in his messages on that cell phone requires appointment of counsel and a reference hearing. Accordingly, we transfer the petition to the superior court for appointment of counsel to represent Parker on the illegal search and seizure issue only. The court shall also conduct a reference hearing pursuant to RAP 16.12, enter findings of fact, and transmit such findings to this court for further action. We otherwise dismiss the petition.¹

The State charged Parker with 11 offenses. Most of the offenses involved J.H. as the alleged victim. Parker allegedly assaulted and kidnapped J.H. and committed the crimes of promoting prostitution and human trafficking while acting as her pimp. These charges were accompanied by firearm allegations.

After a lengthy trial, the jury convicted Parker of all charges. The jury also found by special verdict that he was armed with a firearm. The trial court sentenced him accordingly.

Parker appeals.

He subsequently filed a personal restraint petition. Division Two of this court consolidated his petition for decision with this appeal. As of the filing of this decision, no counsel represents Parker for his personal restraint petition.

INEFFECTIVE ASSISTANCE OF COUNSEL

Parker argues that his counsel provided ineffective assistance of counsel due to two alleged conflicts of interest. We disagree.

¹ We deny, without prejudice, the State's Motion to File Supplemental Appendices to its PRP Response dated September 10, 2015. The State may renew this motion in the superior court for purposes of the reference hearing on the issue of the illegal search and seizure only.

Both the federal and state constitutions provide the right to counsel.² The right to counsel includes the right to effective assistance of counsel.³ This also includes the right to counsel free from conflicts of interest.⁴

The defendant bears the burden to show that an actual conflict of interest adversely affected counsel's performance.⁵ The mere possibility of a conflict of interest does not warrant reversal.⁶ Instead, the defendant must demonstrate an "actual" conflict of interests, a situation where "counsel actively represented conflicting interests."⁷

"Whether the circumstances demonstrate a conflict under ethical rules is a question of law, which is reviewed de novo."⁸

Here, Parker argues that his attorney had two conflicts of interests. Because Parker fails to show that either alleged conflict was an actual conflict of interest, we hold that he fails in his burden to show ineffective assistance of counsel.

² U.S. CONST. amend. VI; CONST. art. I, § 22.

³ Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Crawford, 159 Wn.2d 86, 97, 147 P.3d 1288 (2006).

⁴ State v. Dhaliwal, 150 Wn.2d 559, 566, 79 P.3d 432 (2003).

⁵ Id. at 573.

⁶ Id.

⁷ Id. (quoting Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)).

⁸ State v. Reeder, 181 Wn. App. 897, 908, 330 P.3d 786, review granted in part, 337 P.3d 325 (2014) (quoting State v. Regan, 143 Wn. App. 419, 428, 177 P.3d 783 (2008)).

Representation of Other Clients

Parker first argues that his counsel's representation of other clients created an actual conflict of interest. We disagree.

Under RPC 1.7(a), "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."^[9]

The legal practice of Parker's defense counsel at trial included estate planning and advice to several non-profits. As part of this practice, counsel recommended that his clients donate to certain charities. One charity that he recommended was a non-profit that Officer Taylor, the State's expert witness at trial, had helped to create. After learning that a different police officer had allegedly embezzled funds from the non-profit, Parker's counsel stopped advising his clients to donate to the non-profit.

Here, the trial court noted that it failed to see how the alleged conflict would be an actual conflict of interest or impede counsel's ability to cross-examine the State's expert witness. In response, Parker's counsel argued that it would create the appearance of a conflict of interest, or the appearance that he

⁹ RPC 1.7(a).

was not vigorously cross-examining the witness. But he conceded that it would not be an actual conflict of interest.

We conclude that Parker's counsel did not have any actual conflict of interest. His description of events fully supports that there was no actual conflict of interest, as does his candid representation to the court. We need not decide whether there was any apparent conflict of interest because that is not the material standard.

None of counsel's clients was connected to the present case. And counsel had advised his clients to stop donating to the non-profit connected to the witness at trial. The fact that he had formerly advised clients to donate money to an organization with which this witness was involved fails to create an actual conflict of interest. There simply is no showing that counsel's representation of other clients had any directly adverse impact on representing Parker.

We note that Parker's counsel extensively cross-examined Officer Taylor at trial. This cross-examination included the non-profit and the investigation into its finances. Thus, Parker cannot show that his counsel was actively representing the interests of his other clients rather than Parker's interests.

Parker argues that his counsel's other clients had "a philanthropic interest in supporting an organization whose primary goal was combating human trafficking." Thus, by representing Parker, counsel was acting against the interest of his clients.

This argument conflicts with both this record and the law. Counsel expressly stated that he advised the other clients against further donations to the nonprofit at issue. Even if we assume that counsel's clients had a general interest in preventing human trafficking, this fails to meet the requirements for an actual conflict of interest under RPC 1.7. Thus, Parker cannot show that his counsel's representation was materially limited by his other clients' interests.

Witness Against Client

Parker also argues that his counsel had a conflict of interest because he could have been called as a witness against Parker. Because this record shows otherwise, we disagree.

Under RPC 3.7, "A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness." The State may call the defense counsel as a witness only if "counsel's testimony is both necessary and unobtainable from other sources."¹⁰

Here, there was no conflict of interest. Parker's counsel was not likely to be a necessary witness at this criminal trial because the State expressly chose not to call him as a witness.

The alleged conflict of interest rose from Parker's purported witness tampering. The State discovered that Parker had mailed someone on the defense's witness list letters instructing him on what to testify to. The State decided to call this witness in its case-in-chief to introduce these letters.

¹⁰ Regan, 143 Wn. App at 430.

Parker's counsel moved to withdraw, stating that there was "a remote chance" he would be called as a witness against Parker. He indicated that his private investigator had spoken with this witness and written a report. But counsel had not personally spoken with the witness.

In response, the State stated on the record that it did not plan to call either Parker's counsel or his private investigator as witnesses. It noted that it planned to call only the witness to whom Parker sent the letters. The trial court denied the motion.

Nothing in this record shows that the State ever changed its position about calling defense counsel as a witness at trial. Thus, Parker's counsel was not likely to be a necessary witness and never was, in fact, a witness against his client. There was simply no actual conflict of interest.

Additionally, even if the State had wished to call Parker's counsel as a witness, it would have been unable to do so. To call him as a witness, the State would have needed to prove that his testimony was both necessary and otherwise unobtainable. Here, the State presented the testimony of the witness who had received the letters. Thus, Parker's counsel's testimony would not have been either necessary or otherwise unobtainable.

Parker argues that his counsel was either an "unwitting accomplice" and "critical witness," or an "actual accomplice" to the witness tampering. But both claims are incorrect. As explained previously, counsel was not a necessary witness. He was not a witness at all.

Additionally, nothing in the record indicates Parker's counsel was actually involved, or alleged to be actually involved, with the witness tampering. To the contrary, the State noted that it "ha[d] no concerns about [Parker's counsel] being involved in any of this." Parker fails to point to anything in this record to suggest otherwise.

FIREARM ENHANCEMENTS

Parker also argues that the court erred when it added firearm enhancements to his sentences for human trafficking and promoting prostitution. Because there was a nexus between the firearm and the crimes, we disagree.

RCW 9.94A.533(3) imposes a sentencing enhancement if the defendant commits certain crimes while armed with a firearm. A person is "armed" if the weapon is readily accessible and easily available for use, and there is a nexus between the defendant, the crime, and the weapon.¹¹

Whether the defendant was armed is "a mixed question of law and fact."¹² Whether the evidence for a firearm enhancement is sufficient is a legal question reviewed de novo.¹³

For example, in State v. Easterlin, officers found the defendant with a gun on his lap and a controlled substance on his person.¹⁴ In that case, there was a

¹¹ State v. Easterlin, 159 Wn.2d 203, 206, 149 P.3d 366 (2006).

¹² State v. Schelin, 147 Wn.2d 562, 565, 55 P.3d 632 (2002) (quoting State v. Mills, 80 Wn. App. 231, 234-35, 907 P.2d 316 (1995)).

¹³ Id. at 566.

¹⁴ 159 Wn.2d 203, 206, 149 P.3d 366 (2006).

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¹³ Id. at 566.

¹⁴ 159 Wn.2d 203, 206, 149 P.3d 366 (2006).

sufficient nexus because a jury could find that he was armed to protect the controlled substance.¹⁵

In State v. Johnson, on the other hand, this court concluded that there was no sufficient nexus.¹⁶ In that case, the defendant was in a bedroom when officers knocked on the door to his apartment.¹⁷ When officers entered, they found him in the hallway.¹⁸ The officers later discovered controlled substances in a bedroom and a gun in the compartment of a coffee table in the living room.¹⁹ This court held that because Johnson could not obtain access to the gun, he was not armed at the time.²⁰

Human Trafficking

Parker first argues that there was no nexus between the crime of human trafficking and the firearm. He is wrong.

Under RCW 9A.40.100, a person commits human trafficking by:

(ii) Benefit[ing] financially or by receiving anything of value from participation in a venture that has engaged in [recruiting or transporting a person, knowing that force will be used to cause the person to engage in a commercial sex act]; and

.....

¹⁵ Id. at 210.

¹⁶ 94 Wn. App. 882, 974 P.2d 855 (1999).

¹⁷ Id. at 888.

¹⁸ Id. at 887.

¹⁹ Id. at 887-88.

²⁰ Id. at 894.

[The venture] [i]nvolve[s] committing or attempting to commit kidnapping^[21]

Here, there was a nexus between the crime, the firearm, and the defendant. Parker was charged under this prong, subsection (ii), of the human trafficking statute, because the trafficking involved kidnapping J.H.

Parker used the firearm during this kidnapping. J.H. testified that Parker assaulted her and ordered her to leave the building she was in. J.H. complied, and Parker took her back to their residence. At their residence, Parker continued to assault her. During the assault, Parker pointed the gun at J.H.'s head and asked her if she wanted to die.

Thus, Parker used the gun during J.H.'s kidnapping. Because Parker's human trafficking charge was based on J.H.'s kidnapping, there is a sufficient nexus to the firearm enhancement.

Promoting Prostitution

Parker also argues that the promoting prostitution charge lacked a sufficient nexus to a firearm enhancement. He is wrong again.

Under RCW 9A.88.070,

(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution:

(a) By compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force.^[22]

²¹ (Emphasis added.)

²² Id.

Here, the morning after Parker assaulted J.H. with the firearm, he woke her up and told her that she “needed to work and make some money and put some money in his pocket.” J.H., who was “weak and exhausted and in pain,” “didn’t fight [Parker’s suggestion].”

Accordingly, the use of the firearm was part of the force or threat of force Parker used to compel J.H. to engage in prostitution. Thus, there was a sufficient nexus to this charge.

Parker argues that there was no nexus because he used the firearm only “to commit the separate offense of second degree assault.” But this argument ignores the fact that the second degree assault was part of the force or threat of force that established the promoting prostitution charge.

Parker also argues that his case is analogous to Johnson. But in Johnson, the defendant never had access to the gun and did not use it, unlike this case. The gun was merely found in his apartment.²³

Here, the record shows that Parker used the gun to assault J.H. as part of the conduct that formed the basis for the promoting prostitution and human trafficking charges. Thus, Johnson is not analogous.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Parker raises multiple arguments in his statement of additional grounds for review. None warrants relief.

²³ Johnson, 94 Wn. App at 887-88.

Sufficiency of Evidence

Parker first argues that insufficient evidence supported several charges against him.²⁴ We conclude that sufficient evidence supported each charge.

Evidence is sufficient when any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt.²⁵ When considering a sufficiency challenge, we defer to the jury's determination as to the weight and credibility of the evidence.²⁶ "In claiming insufficient evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it."²⁷

Burglary

Parker first argues that the State failed to prove one element of burglary—unlawfully entering or remaining in a building.²⁸ He argues that he received permission to enter the building, because an occupant opened the door to let him enter. This argument is unpersuasive.

Jennifer Prerost testified that she was in a house with J.H. when Parker came to the house and began banging on the door. While screaming outside, he threatened to kick in the door, telling Prerost to open the door for him. Parker

²⁴ Pro Se Supplement Brief Pursuant to RAP 10.10 Statement of Additional Grounds at 7-19.

²⁵ State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).

²⁶ State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

²⁷ State v. Homan, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

²⁸ Pro Se Supplement Brief Pursuant to RAP 10.10 Statement of Additional Grounds at 8-9.

also told Prerost that she "kn[e]w how he is" and warned her not to "play with him."

Prerost eventually opened the door. But from this testimony, the jury could have found that Prerost opened the door because of Parker's threats and that she did not willingly invite him into the house. This is supported by the fact that Prerost testified that she did not welcome Parker into the house and that he did not have her permission to be there. In short, this credibility determination by the jury is not reviewable by this court. Thus, sufficient evidence proves that Parker unlawfully entered or remained in the house.

First Degree Kidnapping

Parker also argues that insufficient evidence supports his conviction for first degree kidnapping. Specifically, he argues that he did not abduct J.H. because she willingly left the house with him. This argument is contrary to the record.

Prerost testified that J.H. "wanted to leave [Parker]." When Parker arrived at the house where Prerost was with J.H., J.H. begged her not to let him in. J.H. was "scared and panicked" and ran to hide in a bedroom. After Parker entered the house, he kicked down the bedroom door. Prerost could hear J.H. crying and Parker hitting her. She then saw Parker "pushing [J.H.] towards the door," push her into the back seat of his car, and "spe[e]d off."

With this testimony, the jury could have found that J.H. did not willingly leave with Parker. Rather, she did so because of the use of force or threatened

force. Again, we do not review this credibility determination by the jury. The evidence was sufficient to support the conviction of first degree kidnapping.

Second Degree Assault

Parker next argues that insufficient evidence supports one count of second degree assault.²⁹ That count of assault was based on the intent to commit a felony, namely unlawful imprisonment.

Parker argues that the State failed to prove this crime because the jury instruction for this charge stated that the assault occurred "on or about December 13, 2012 through January 20, 2013." Parker argues that under this instruction, the State had to show that he imprisoned J.H. for the duration of the 37 days. He is wrong again.

Here, the State identified a specific instance during that range where Parker assaulted J.H. and forced her to stay in her room. The State was not required to prove that either the assault, or the false imprisonment it was intended to achieve, lasted for the duration of the "on or about" period.

Unlawful Possession of a Firearm

Parker also argues that insufficient evidence supports his conviction for unlawful possession of a firearm. Specifically, he argues that the State did not prove that he constructively possessed the firearm.³⁰ The record shows otherwise.

²⁹ Pro Se Supplement Brief Pursuant to RAP 10.10 Statement of Additional Grounds at 11-12.

³⁰ *Id.* at 12-15.

A person constructively possesses something "that is not in his or her physical custody but is still within his or her 'dominion and control.'"³¹ One factor courts consider is whether a person had dominion and control over the premises where the contraband was found.³²

Here, the State presented sufficient evidence for the jury to find beyond a reasonable doubt that Parker constructively possessed the firearm. Police found the firearm in the house where Parker lived. Additionally, J.H. testified that Parker instructed her to move the firearm from under his bed to the garage, which she did.

Here, the fact that officers found the firearm in Parker's house, and that J.H. moved the firearm at Parker's request, show that he had dominion and control over the firearm. Thus, the State proved that he constructively possessed the firearm.

Witness Tampering

Next, Parker argues that insufficient evidence supported one charge of witness tampering.³³ Specifically, he argues that he did not tell Prerost to change her testimony.

But the record provides evidence from which the jury could find that Parker asked Prerost to change her testimony. The State introduced a recorded

³¹ State v. Davis, 182 Wn.2d 222, 227, 340 P.3d 820 (2014) (quoting State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969)).

³² State v. Tadeo-Mares, 86 Wn. App. 813, 816, 939 P.2d 220 (1997).

³³ Pro Se Supplement Brief Pursuant to RAP 10.10 Statement of Additional Grounds at 15-17.

jail call from Parker to Prerost. In the call, Parker never directly asks Prerost to lie or change her testimony. But the jury could have inferred that Parker was attempting to instruct Prerost on how to testify.

Parker stated that he learned Prerost had said that she had witnessed his assault of J.H. Parker told Prerost that she needed to tell the truth and say that none of that had happened.

Later, when Prerost said that she had left the house and “wasn’t even nowhere around” at the time of the assault, Parker replied “I don’t know.” When Prerost reiterated that she had left and wasn’t there, Parker replied “Yeah. You just have—you was there. Nothing happened.” He continued “You know I didn’t do that. You was there with us.”

At trial, Prerost testified that she witnessed Parker break down the door, assault J.H., and push her into his car. Thus, although Parker told Prerost to tell “the truth” and say that nothing happened, the jury could have inferred that Parker was instructing Prerost to lie.

Similarly, the fact that Prerost stated that she wasn’t present, and Parker stated that she was, allowed the jury to find that Parker was instructing Prerost to say that she was present.

Thus, sufficient evidence supported this witness tampering charge.

Promoting Prostitution and Human Trafficking

Parker also argues that insufficient evidence supports his convictions of promoting prostitution and human trafficking. Specifically, Parker argues that the court should have suppressed evidence obtained from allegedly warrantless

searches of J.H.'s cell phones. Parker relies on evidence outside the record on appeal to make this argument. But he raises the same argument in his personal restraint petition. Accordingly, we do not consider this argument any further for purposes of the appeal and address it in the context of his personal restraint petition.

Ineffective Assistance of Counsel

Parker also argues that his counsel provided ineffective assistance by failing to move to suppress evidence found during allegedly warrantless searches of J.H.'s cell phones.³⁴ Because he fails to show that counsel's performance was deficient at the time of trial, we disagree.

The defendant bears the burden of proving ineffective assistance of counsel.³⁵ "[T]he defendant must show that (1) counsel's representation was deficient, that is, it fell below an objective standard of reasonableness and (2) there was prejudice, measured as a reasonable probability that the result of the proceeding would have been different."³⁶

Judicial scrutiny of counsel's performance is "highly deferential."³⁷ We make every effort "to eliminate the distorting effects of hindsight, to reconstruct

³⁴ Id. at 26-29.

³⁵ State v. Humphries, 181 Wn.2d 708, 719, 336 P.3d 1121 (2014).

³⁶ Id. at 719-20.

³⁷ Strickland, 466 U.S. at 689.

the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."³⁸

Here, even assuming officers unlawfully searched J.H.'s cell phones, counsel was not ineffective for failing to move to suppress this evidence. Parker relies on the state supreme court's February 2014 decision in State v. Hinton to argue that he had standing to move to suppress evidence of his messages found in the search of another's cell phone.³⁹ But his trial was in November 2013, prior to the supreme court's decision.

At the time of his trial, Division Two of this court's June 26, 2012 decision in that case was still good law.⁴⁰ And that decision supported the conclusion that Parker lacked standing to challenge the search.⁴¹ Thus, counsel's decision not to move to suppress this evidence was objectively reasonable.

Without a showing of this first prong of the test, there is no need to reach the second prong—the question of prejudice.

Prosecutorial Misconduct

Parker also argues that the prosecutor committed misconduct by knowingly eliciting false testimony.⁴² But while Parker points out some

³⁸ Id.

³⁹ 179 Wn.2d 862, 319 P.3d 9 (2014).

⁴⁰ State v. Hinton, 169 Wn. App. 28, 280 P.3d 476 (2012), rev'd, 179 Wn.2d 862 (2014).

⁴¹ Id. at 35.

⁴² Pro Se Supplement Brief Pursuant to RAP 10.10 Statement of Additional Grounds for Review at 29-31.

inconsistencies in the State's witnesses' testimony, he fails to cite anything in the record indicating that the prosecutor knew this testimony was false. Thus, this argument is unpersuasive.

Gang Evidence

Finally, Parker argues that the trial court abused its discretion when it admitted evidence that he was in a gang.⁴³ He argues that the court failed to balance this evidence's probative value and prejudicial effect before admitting the evidence.

But the trial court balanced the probative value and prejudicial effect when it ruled in limine on this issue. There is no indication in the record that this ruling was tentative and subject to further argument during trial. Accordingly, the court was not required to revisit the matter when Parker renewed his objection at trial.

PERSONAL RESTRAINT PETITION

In his consolidated personal restraint petition, Parker challenges the sufficiency of the charging document. He also claims his counsel was ineffective for several reasons. Finally, he claims the search and seizure of J.H.'s cell phones was illegal.

"When considering a timely personal restraint petition, courts may grant relief to a petitioner only if the petitioner is under an unlawful restraint, as defined by RAP 16.4(c)."⁴⁴ If the alleged error is constitutional, the petitioner must show

⁴³ Id. at 32-35.

⁴⁴ In re Pers. Restraint of Yates, 177 Wn.2d 1, 16, 296 P.3d 872 (2013); accord RAP 16.4(a).

actual prejudice.⁴⁵ If the alleged error is non-constitutional, the petitioner must show “a fundamental defect resulting in a complete miscarriage of justice.”⁴⁶

The petitioner must make these showings by a preponderance of the evidence.⁴⁷

When reviewing a personal restraint petition, appellate courts have three courses of action: “(1) dismiss the petition, (2) transfer the petition to a superior court for a full determination on the merits or a reference hearing, or (3) grant the petition.”⁴⁸

If the petitioner fails to make a prima facie showing of actual prejudice or a fundamental defect, the court should dismiss the petition.⁴⁹ On the other hand, if the petitioner meets his burden to show actual prejudice or a fundamental defect, the court should grant the petition.⁵⁰ The court should transfer the petition to the superior court if “the petitioner makes the required prima facie showing ‘but the merits of the contentions cannot be determined solely on the record.’”⁵¹

⁴⁵ Id. at 17.

⁴⁶ Id. (quoting In re Pers. Restraint of Elmore, 162 Wn.2d 236, 251, 172 P.3d 335 (2007)).

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id. at 18.

⁵¹ Id. (quoting Hews v. Evans, 99 Wn.2d 80, 88, 660 P.2d 263 (1983)).

To rely on allegations outside the existing record, “the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief.”⁵² If this evidence relies on others’ knowledge, the petitioner can use affidavits or other corroborating evidence as to what those witnesses would testify.⁵³

But “[t]his does not mean that every set of allegations which is not meritless on its face entitles a petitioner to a reference hearing. Bald assertions and conclusory allegations will not support the holding of a hearing.”⁵⁴ Instead, the petitioner must state facts with “particularity.”⁵⁵

Here, with one exception, Parker fails to make a prima facie showing that he is entitled to relief.

Charging Documents

Parker first argues that he is entitled to relief because his charging documents were constitutionally defective. We disagree.

Both the federal and state constitutions give defendants the right to be informed of the charges against them.⁵⁶ The Sixth Amendment requires that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of

⁵² Id.

⁵³ Id.

⁵⁴ In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

⁵⁵ Id.

⁵⁶ State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000).

the nature and cause of the accusation.”⁵⁷ Likewise, our state constitution provides that the accused has the right “to demand the nature and cause of the accusation against him.”⁵⁸

To be constitutional, charging documents must include “all essential elements of a crime, statutory and nonstatutory.”⁵⁹ Essential elements are “those facts that must be proved beyond a reasonable doubt to convict a defendant of the charged crime.”⁶⁰

When the defendant does not challenge the charging document until after the verdict, courts “more liberally construe[] [the document] in favor of validity.”⁶¹ “Under this rule of liberal construction, even if there is an apparently missing element, it may be able to be fairly implied from language within the charging document.”⁶²

To apply this rule, courts use a two-prong test: “(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging

⁵⁷ U.S. CONST. amend. VI.

⁵⁸ CONST. art. I, § 22.

⁵⁹ State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995).

⁶⁰ State v. Zillyette, 178 Wn.2d 153, 158, 307 P.3d 712 (2013) (quoting State v. Powell, 167 Wn.2d 672, 683, 223 P.3d 493 (2009)).

⁶¹ State v. Kjorsvik, 117 Wn.2d 93, 102, 812 P.2d 86 (1991).

⁶² Id. at 104.

document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?"⁶³

Under the first prong, the essential question is "whether all the words used would reasonably apprise an accused of the elements of the crime charged."⁶⁴

The second prong looks to whether the defendant "actually received notice of the charges he or she must have been prepared to defend against."⁶⁵

"It is possible that other circumstances of the charging process can reasonably inform the defendant in a timely manner of the nature of the charges."⁶⁶

Errors in the charging document do not necessarily create reversible error. For example, an "[e]rror in a numerical statutory citation is not reversible error unless it prejudiced the accused."⁶⁷

This court reviews de novo the adequacy of a charging document.⁶⁸

Here, Parker first challenges the sufficiency of his charging documents after his conviction. Accordingly, we construe the charging documents more liberally.

Parker alleges that the charging documents were insufficient for two reasons, both relating to the dates listed on the documents. First, the third

⁶³ Id. at 105-06.

⁶⁴ Id. at 109.

⁶⁵ Id. at 106.

⁶⁶ Id.

⁶⁷ Vangerpen, 125 Wn.2d at 787-88.

⁶⁸ State v. Johnson, 180 Wn.2d 295, 300, 325 P.3d 135 (2014).

amended information incorrectly lists specific dates rather than date ranges. For example, while the original information alleged that Parker committed human trafficking “on or **between** November 1, 2012 and April 12, 2013,” the amended information alleges that Parker committed this crime “on or **about** November 1, 2012 and April 12, 2013.”⁶⁹ The third amended information uses “on or about” rather than “on or between” in 10 of the 11 charges.

Second, Parker argues that the dates listed for human trafficking and promoting prostitution are incorrect. The amended information alleges that these crimes occurred “on or about November 1, 2012 and April 12, 2013.” But Parker points out that J.H. was in custody from November 6, 2012 to December 6, 2012.

In this case, the charging documents reasonably informed Parker of the charges against him. The State is not required to allege the exact date the crime occurred because that is not an element of the crime. RCW 10.37.050(5) requires that a charging document set forth sufficient facts to demonstrate that the statute of limitations has not expired. Unless time is an essential element, the State need not plead anything more specific.

Here, the dates in the charging documents indicated that the statute of limitations had not expired. The fact that they mistakenly indicated two specific dates, rather a range of dates, was not the omission of an essential element. Thus, the charging documents were not defective.

Moreover, Parker cannot show that the charging documents prejudiced his defense. Most of the jury instructions contained language stating that the crimes

⁶⁹ (Emphasis added.)

occurred "through" a pair of dates. One assault instruction stated that the crime occurred "on or about January 1, 2013 and February 2, 2013." When the jury asked if this date range was also supposed to be "through," both parties agreed that it was. Thus, Parker's counsel understood that the State charged his client with committing crimes over a range of days, as his response to the jury's question demonstrates.

Parker's argument that the promoting prostitution and human trafficking charges included the wrong date is unpersuasive. The State is not required to allege the exact date the crime occurred. Additionally, the State's theory of the case was that Parker began to recruit J.H. while she was in custody. Thus, it was not inappropriate for the charging document to include J.H.'s time in custody.

Ineffective Assistance of Counsel

Parker also argues that he received ineffective assistance of counsel.

"[I]f a personal restraint petitioner makes a successful ineffective assistance of counsel claim, he has necessarily met his burden to show actual and substantial prejudice."⁷⁰

Parker argues that his counsel was ineffective for three reasons. None survives scrutiny.

⁷⁰ In re Pers. Restraint of Grace, 174 Wn.2d 835, 846-47, 280 P.3d 1102 (2012).

First, he argues that his counsel should have challenged the sufficiency of the charging documents. Because the charging documents were sufficient for the reasons we already explained in this decision, this claim is not persuasive.

Second, Parker argues that his counsel was ineffective for failing to move to suppress information obtained from J.H.'s cell phones. But as discussed earlier, it was not deficient performance for counsel to conclude under then existing law that Parker lacked standing to challenge the search of J.H.'s cell phones.

Finally, Parker argues that his counsel failed to properly investigate the case. Parker relies on conclusory allegations outside the record to support this claim.

Parker alleges that his counsel failed to investigate his case and states that if counsel had called certain witnesses, the jury would not have found him guilty.⁷¹ Similarly, Parker provided affidavits and signed declarations from potential witnesses stating that they were not called to testify but had information helpful to Parker's case.⁷²

But these statements do not specify with particularity to what these witnesses would have testified. For example, one affidavit merely says that the witness had "valuable information."⁷³ Another affidavit states that the witness's

⁷¹ Personal Restraint Petition, Appendix 1-A.

⁷² Id. at Appendix G.

⁷³ Id.

testimony "could have helped [Parker's] case."⁷⁴ Parker's affidavit also fails to provide any details as to the content of these witnesses' testimony.

Parker also fails to cite anything in the trial record that indicates to what these witnesses would have testified.

Thus, we conclude that Parker relies on conclusory statements, and thus is not entitled to relief or a factual hearing.

Search and Seizure

Finally, Parker argues that the State illegally searched and seized J.H.'s cell phones.⁷⁵ For the reasons that follow, we transfer this petition to the superior court for two things. First, the court shall appoint counsel to represent Parker for his request for relief in the personal restraint petition. Second, the court shall hold a reference hearing on Parker's claim that J.H.'s cell phones were illegally searched and seized, as State v. Hinton⁷⁶ impacts that analysis.

In Hinton, the court concluded that the defendant had a privacy interest in his text messages to another person, allowing him to challenge the warrantless search of that person's phone.⁷⁷

On the present record and the present status of briefing, we are unable to determine whether Parker is entitled to relief. Accordingly, we transfer the

⁷⁴ Id.

⁷⁵ Personal Restraint Petition at 12-14; Pro Se Supplement Brief Pursuant to RAP 10.10 Statement of Additional Grounds at 17-26.

⁷⁶ 179 Wn.2d 862, 319 P.3d 9 (2014).

⁷⁷ Id. at 865.

petition to the superior court for appointment of counsel, a reference hearing, and findings of fact. The findings shall be transmitted to this court for further action.

The superior court's findings of fact should include, without limitation:

1. A specification of all evidence on J.H.'s cell phones to which Parker's asserted privacy interest extended;
2. Whether such evidence was admitted at trial; and
3. If not admitted, whether such evidence led to other evidence that was admitted at trial.
4. A specification of what evidence admitted at trial, independent of that listed in paragraphs 1 to 3, supported Parker's convictions.

We affirm Parker's judgment and sentence for the direct appeal. We dismiss his personal restraint petition to the extent of all claims except for the illegal search and seizure claim. With respect to that claim, we transfer the petition to the superior court for appointment of counsel and a reference hearing on that claim only. Thereafter, the court shall enter findings of fact and transmit them to this court for further action, all pursuant to RAP 16.12.

COX, J.

WE CONCUR:

Trickey, J.

Dwyer, J.

APP. B.

APPENDIX B. COMPLAINT TO SEARCH HOLLIDAY'S CELL PHONE

4. = 1

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

Defendant.

No. 201301160

COMPLAINT FOR SEARCH
WARRANT FOR FRUITS /
INSTRUMENTALITIES AND / OR
EVIDENCE OF THE CRIME OF RCW
9A.40.100 Human Trafficking, RCW
9A.88.080 Promoting Prostitution and/or
RCW 9A.88.030 Prostitution

~~BLACK ZTE CELLULAR PHONE MODEL Z431, S/N
322423142390, BEING STORED IN THE
BREMERTON POLICE DEPARTMENT'S SECURE
EVIDENCE LOCKER IN THE CITY OF BREMERTON,
COUNTY OF KITSAP, STATE OF WASHINGTON,~~

RECEIVED AND FILED
APR - 8 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

I, DETECTIVE RYAN HEFFERNAN, being first duly sworn upon oath, depose and say
I am a duly appointed, qualified, and acting detective assigned to the Bremerton Police
Department's Special Operations Group (SOG), and am charged with responsibility for the
investigation of criminal activity occurring within Kitsap County. I have probable cause to
believe, and do, in fact, believe, that in violation of the laws of the State of Washington with
respect to RCW 9A.40.100 Human Trafficking, RCW 9A.88.080 Promoting Prostitution and/or
RCW 9A.88.030 Prostitution, evidence and/or fruits and/or instrumentalities of said offense(s) are
presently being kept, stored or possessed, and can be located and seized in the above-described
cellular phone. My belief being based upon information acquired through personal interviews
with witnesses and other law enforcement officers, review of reports and personal observations,
said information being as further described herein-

I have been employed as a police officer by the City of Bremerton Police Department
since July 2006. I have been a SOG Detective since September 2011. Prior to becoming a police
officer, I served as an Assistant Attorney General for the State of Alaska. I received a BA with
honors from Lafayette College (1998), and a JD from Rutgers School of Law (2002).

In July 2006, I attended 720 hours of training at the Washington State Criminal Justice
Training Center in Burien, Washington. There, I received 14-hours of basic narcotics training.



1 The training included instruction in drug and drug paraphernalia identification, as well as
2 identifying impairment indicators associated with specific drug use. Instruction pertained to each
3 of the seven categories of drugs: depressants, stimulants, hallucinogens, phencyclidine and
4 narcotic analgesics.

5 In February of 2010 I attended an 80-hour basic drug enforcement class presented by the
6 Drug Enforcement Administration. The training included, but was not limited to the following:
7 pharmacology/drug ID, electronic narcotics' investigation, criminal interdiction, tactical entries
8 and surveillance procedures

9 In September 2010 I attended a 24-hour methamphetamine investigations course
10 presented by the Midwest Counterdrug Training Center. The training pertained to
11 methamphetamine lab identification, and considerations for writing and executing
12 methamphetamine related search warrants.

13 In November 2012, I attended 20 hours of training through the California Narcotics
14 Officers Association (CNOA). The course topics included instruction on informant management,
15 search and seizure issues, controlled buy and buy-bust operations, and undercover officer
16 survival.

17 During my law enforcement career, I have participated in multiple narcotics
18 investigations, which have resulted in arrests and seizures of various controlled substances
19 including Marijuana, Cocaine, Methamphetamine, Black Tar Heroin, Ecstasy, Molly and
20 Ketamine. Through these investigations and discussions with other experienced law enforcement
21 agents, I have become familiar with the methods of packaging illegal narcotics, values of illegal
22 narcotics, and terms associated with the manufacture, distribution and use of these substances. I
23 have been an affiant for approximately 25 narcotics related search warrants, and participated in
24 the execution of narcotics related search warrants that have resulted in arrests, and the discovery
25 of illegal narcotics and items related to the use, packaging, distribution, and manufacturing of
26 these substances.

27 In addition to narcotics related crimes, I have participated in investigations pertaining to
28 prostitution. Through the course of these investigations, I have interviewed numerous prostitutes
29 and pimps. I have found through my training and experience that these investigations often
30 overlap with drug investigations. Specifically, I have learned that those individuals who promote
31

COMPLAINT FOR SEARCH WARRANT; Page 2



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1 prostitution, commonly referred to as pimps, sometimes use drugs as a means to maintain control
2 over prostitutes. It is common for those individuals who promote prostitution to pay prostitutes
3 with drugs, and withhold drugs when they are dissatisfied with performance. Pimps will often
4 utilize well established prostitutes to mentor new prostitutes, and facilitate their transition into the
5 illicit activity. I also know that pimps and prostitutes will often utilize internet websites such as
6 tnaboard.com and backpage.com to advertise for prostitution. Pimps and prostitutes will often use
7 their cellular phones to post ads on these websites, and communicate with clients and each other
8 about their illicit activities.

9 I also know that people engaged in prostitution perform their services either in a fixed
10 location that they designate, such as a motel room, or in a location determined by the client. This
11 distinction is commonly referred to as an "in" or "out" call. Because of the inherent dangers
12 associated with prostitution, pimps or their agents will often drive prostitutes to out calls and
13 remain in the area during the encounter. This practice provides a degree of perceived protection
14 for the prostitute, and allows the pimp to immediately be paid for the service. In addition to
15 driving their prostitutes to specific locations for out calls, I know from my training and
16 experience that pimps often use their vehicles as a private meeting locations to discuss their
17 criminal business enterprises, which often extend beyond promoting prostitution.

18 This affidavit is made in support of an application for a search warrant for the cellular
19 telephone described as follows:

20 **BLACK ZTE CELLULAR PHONE MODEL Z431, S/N 322423142390, BEING STORED IN**
21 **THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE LOCKER IN THE CITY OF**
22 **BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON**

23 **PROBABLE CAUSE:** Over the course of the past several months, SOG detectives have
24 investigated a human trafficking operation led by Anthony D Parker (6/15/79) and his former
25 girlfriend, Lorena A Llamas (5/31/84). Llamas has been incarcerated in Kitsap County Jail since
26 November 17, 2012. While there, Llamas has groomed inmates to work as prostitutes, and sent
27 them out to work for Parker. Detectives identified one of these prostitutes as Johanna Holliday.
28 ~~Holliday used her black ZTE cellular phone model Z431, S/N 322423142390 (hereinafter~~
29 ~~referred to as the "Phone") to communicate with Llamas, Parker and clients about prostitution~~
30 ~~activities. Holliday may have also used the Phone to advertise prostitution services, on~~
31



1 backpage.com between December 2012 and April 2013. As set forth below, there is probable
2 cause to believe that evidence of human trafficking, promoting prostitution and/or prostitution
3 will be found in the Phone, which is currently ~~be~~ stored in the Bremerton Police Department's
4 secure evidence room.

5 Over the past several months, detectives reviewed jail phone calls that Llamas made to
6 Parker and Holliday. All of the calls to Holliday were made to (360) 908-2471, the number
7 associated with the Phone. The number is listed for Holliday in the jail's inmate record
8 database. Holliday confirmed that the number is associated with the Phone. I have called the
9 Phone, and confirmed that the number matches it.

10 During jail calls, Holliday openly discusses her prostitution activities with Llamas.
11 Holliday tells Llamas that she (Holliday) is staying at Parker's residence, "posting" and taking
12 calls. I know from my training and experience that the term posting refers to placing
13 advertisements for prostitution on various websites. Through my investigation, I learned that
14 Holliday posts ads on backpage.com.

15 In one instance, Holliday tells Llamas that that she (Holliday) had intercourse with a
16 customer after giving him a hand-job with lotion. Holliday acquired a rash, and had to go to the
17 store with Parker to buy medicated douche. In another phone call, Holliday discusses her
18 relationship with an Asian prostitute working for Parker. Holliday states that Parker views her
19 (Holliday) as the "top bitch" and instructed her (Holliday) to "check the Asian bitch." I reviewed
20 a backpage.com ad featuring Holliday and an Asian female, who I identified through a review of
21 available police databases as Rancia J Camacho (5/19/86). The ad states, "two girl special -sexy
22 blonde and hot Asian!!" Detectives interviewed Camacho, who confirmed that Holliday worked
23 as a prostitute. Camacho told detectives that she forwarded her photos to Holliday's Phone, which
24 Holliday then posted on backpage.com. Camacho believed that Holliday used the Phone to post
25 the ads. The backpage.com ad featuring Camacho and Holliday lists Parker's phone number;
26 however the majority of Holliday's ads list the number associated with her Phone.

27 On 1/23/13, Parker tells Llamas that he assaulted "Baby Doll." Through the course of my
28 investigation, I learned that Baby Doll is a moniker used by Holliday. Parker says that Holliday
29 has been "stealing shit . . . money and drugs." Parker states that Holliday "ain't going anywhere
30 unless she wants her other eye shut up." Llamas asks Parker if he (Parker) already hit Holliday,
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1 and then says something like, "Of course you did." During a phone call on 2/2/13, Holliday
2 describes the assault in detail. Holliday tells Llamas that Parker picked her up by the hair, threw
3 her against a wall, ripped out a chunk of her hair and gave her a black eye. Holliday says that she
4 "pissed herself twice" during the assault. I later spoke with a witness, who corroborated
5 Holliday's account of events.

6 On or around 2/11/13 Parker was arrested for burglary and an outstanding DOC warrant.
7 He (Parker) immediately calls Holliday on the Phone, and tells her, "You need to follow my
8 orders . . . what the fuck I tell you from right now until I get the fuck out of here in three days."
9 Parker also cautions Holliday that that "[her] money better be right when [he] gets out." Parker
10 instructs Holliday to help with his bail saying, "Take that little bit of chump change that you
11 fucking got and give it to Jaccet." I know that Jaccet is the moniker used by Tyler F Williams
12 (1/26/76), a well-known local gang member. When Holliday starts to sob, Parker says, "I don't
13 want to hear any crying bitch. . . . stop crying nigga, I want someone to be making fucking
14 moves." During telephone calls during this time period with Llamas, Holliday says that Parker
15 keeps all of her money, and she (Holliday) is taking the opportunity while Parker is in jail to
16 make money for herself.

17 On 2/12/13, Holliday speaks with Llamas, and says that she cannot talk because she
18 (Holliday) is in the middle of a call. At the same time, Detective Rauback drove by Holliday's
19 residence, and observed a male, later identified as Jonathan Miller, talking on his cell phone in
20 the yard. Detective Rauback had observed Miller parked in the area earlier. I later contacted
21 Miller, who confirmed that he had been at the residence to meet with Holliday. Miller, who
22 recognized Holliday from a photo, told me that he had found Holliday's advertisement on
23 backpage.com, and called her by phone to arrange for an erotic massage.

24 On 2/19/13, detectives posed as a potential customer, and sent Holliday a text message to
25 the Phone asking if she was available for a call. Holliday, who had recently posted a new ad on
26 backpage.com, corresponded with detectives to arrange a meeting. Detectives asked Holliday to
27 meet at a local hotel. Holliday refused, stating that she does not do hotels. Holliday stated that she
28 wanted to meet at a house. Holliday eventually stopped communicating with detectives.
29 Following the failed meeting, Holliday continued to post new ads on backpage.com with the same
30 phone number.

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1 On 2/22/13, detectives applied for a search warrant for Holliday's backpage.com ads.
2 Kitsap County Superior Court Judge Jennifer Forbes issued the warrant. Detectives obtained the
3 customer, and billing information underlying the ads which lists both Parker and Holliday's
4 phone numbers as well as various addresses associated with both subjects.

5 On 3/13/13, detectives applied for a search warrant for Holliday's phone records related to
6 the number (360) 908-2471. Kitsap County Superior Court Judge Jennifer Forbes issued the
7 warrant, which was served on AT&T on or around 3/14/13. As of this date, AT&T has not
8 responded to the warrant.

9 On 4/3/13, Parker was placed into custody on an outstanding DOC warrant. Parker calls
10 the phone numerous times, and gives Holliday instructions on what she needs to do while he is in
11 custody. Holliday discusses some of her clients, and money that she is making through
12 prostitution and saving for Parker. Parker tells Holliday, "I need you to do what the fuck I say to
13 a T. Just do what you're supposed to do and stack." I know from my training and experience
14 that "stack" means to save money. Parker talks about using the money to purchase a vehicle, and
15 pay off debt that he owes for bail from a prior arrest. Parker also tells Holliday to take "Monster"
16 from underneath the mattress, and put him in a duffle-bag in the shed. I know from conversations
17 with Jaccet associates that Parker is in possession of a handgun, which was stolen and recently
18 returned to him. I believe that "Monster" is a reference to the gun.

19 On 4/4/13 at approximately 1900, Detective Rauback advised me that he had observed
20 Holliday and Alisia Crettol meeting with Travier Stevenson (AKA Little Jaccet). Stevenson is a
21 gang member who uses, and sells Percocet pills. Detective Rauback observed Holliday meet
22 briefly with Stevenson inside a Ford P/U truck WA license A37747M. The vehicle is registered to
23 Stevenson's girlfriend, Janee Morgan. Holliday then returned to Crettol's vehicle, a blue Ford
24 Escort WA license AEH1175. The meeting occurred in the area of the A&C Tavern on Perry
25 Ave. Detective Rauback followed Crettol away from the area, and coordinated with patrol
26 officers to stop the vehicle in the area of 16th St and Warren Ave.

27 I responded to the location of the stop, and stood by while Holliday and Crettol were
28 detained in properly fitting, and double-locked restraints. I escorted Holliday to a patrol vehicle,
29 and explained that I was investigating a possible drug transaction that had just occurred as well as
30 other crimes related to prostitution. I read Holliday her Miranda rights from a department issued
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1 card. Holliday acknowledged her rights, and agreed to speak with me.

2 I asked Holliday how many pills she had just gotten from Stevenson. Holliday was
3 hesitant to answer, and mumbled something that I could not understand. I told Holliday that an
4 undercover detective had observed the transaction, and asked her again how many pills she had
5 gotten from Stevenson. Holliday told me that she had gotten one pill from him. I asked Holliday
6 where she had put the pill. Holliday told me that she had put it inside her purse, which was sitting
7 in the passenger seat of the vehicle. I asked Holliday for consent to retrieve the pill, and she
8 agreed to same. It should be noted that Crettol also agreed to a search of the vehicle, and
9 confirmed that the purse belonged to Holliday. I went to the vehicle, and withdrew the purse as
10 well as the Phone from the passenger seat. Crettol was present, and confirmed that the Phone
11 belonged to Holliday.

12 I returned with the items to Holliday, and took off her hand restraints. Holliday located
13 the pill – small, round blue pill marked A 215 – inside her purse as well as a crumpled up piece of
14 foil. Holliday handed both items over to me. I know from my training and experience that pill
15 users will often smoke pills on foil as a means to bypass the chemical binders in the pills,
16 resulting in an immediate and intense high. I showed Holliday the Phone located on the passenger
17 seat. Holliday told me that it was her Phone, and identified the number as (360) 908-2471. I
18 called the number, confirming same. I took custody of the Phone.

19 Because Holliday was cooperative throughout the interview and agreed to meet with
20 detectives the following day to make a recorded statement regarding her criminal activities, she
21 was released from custody. I placed the Phone into a secure evidence locker with the intent to
22 either examine it with Holliday's consent the following day, or if necessary apply for a search
23 warrant. I placed the pill, and foil into evidence in accordance with department procedure.
24 Through a search of drugs.com, I identified the pill as 30 mg Oxycodone Hydrochloride, a
25 schedule II narcotic.

26 On 4/5/13, Holliday failed to show up for her interview. She has not contacted detectives,
27 and her whereabouts are unknown.

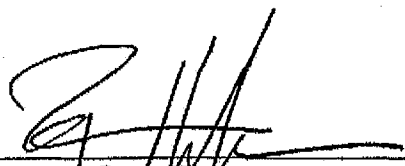
28 Based upon the foregoing, there is probable cause to believe that evidence of human
29 trafficking, promoting prostitution and/or prostitution will be found in Holliday's Phone. I
30 respectfully request that the court issue a search warrant allowing law enforcement to search and
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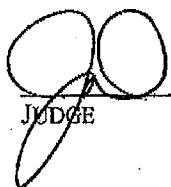
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seize the following information:

1. All information stored in the above-described cellular phone that can be extracted through a forensic examination, or other means including, but not limited to images, video, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information relating to human trafficking, promoting prostitution and/or prostitution.


 DETECTIVE RYAN HEFFERNAN
 Bremerton Police Department

SUBSCRIBED AND SWORN to before me this 8 day of April, 2013.


 JUDGE

Distribution—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Detective)



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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

BLACK ZTE CELLULAR PHONE MODEL Z431, S/N 322423142390, BEING STORED IN THE SECURE EVIDENCE LOCKER IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON, DEFENDANT.

No. 20130100

SEARCH WARRANT FOR FRUITS,
INSTRUMENTALITIES AND/OR EVIDENCE
OF A CRIME, TO WIT- 9A.40.100 Human
Trafficking, RCW 9A.88.080
Promoting Prostitution and/or RCW
9A.88.030 Prostitution

RECEIVED AND FILED

APR - 8 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

STATE OF WASHINGTON TO- Any Peace Officer in said County

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, in violation of the laws of the State of Washington, fruits, instrumentalities and/or evidence of a crime as defined by law is being possessed, or kept, in violation of the provisions of the laws of the State of Washington, hereinafter designated and described:

BLACK ZTE CELLULAR PHONE MODEL Z431, S/N 322423142390, BEING STORED IN THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE LOCKER IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON

NOW, THEREFORE, in the name of the State of Washington, you are hereby commanded, with the necessary and proper assistance, to enter and search said place and to seize any fruits, instrumentalities and/or evidence of the crime(s) of ~~9A.40.100 Human Trafficking~~, RCW 9A.88.080 Promoting Prostitution and/or RCW 9A.88.030 Prostitution, to wit-

1. All information stored in the above-described cellular phone that can be extracted through a forensic examination, or other means including, but not limited to images, video, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored




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Adult Criminal and Administrative Divisions
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information relating to human trafficking, promoting prostitution and/or prostitution.
and to safely keep the same and to make a return of said warrant within ten (10) days; with a
particular statement of all the articles seized and the name of the person or persons in whose
possession the same were found, if any; and if no person be found in possession of said articles,
the return shall so state. A copy of said warrant shall be served upon the person or persons found
in possession thereof; if no such persons are found, a copy of said warrant shall be posted upon or
provided to said place where the same are found, then in any conspicuous place upon the place,
together with a receipt for all the articles seized.

GIVEN UNDER MY HAND this 8 day of April, 2013



JUDGE

STATE OF WASHINGTON }
COUNTY OF KITSAP } ss }

I, DAVID W. PETERSON, clerk of the above-entitled County do hereby certify that the foregoing instrument is a true and exact copy of the original now on file in my office.

In witness whereof I hereunto set my hand and the seal of said Court this 9 day of SEPT 2015

DAVID W. PETERSON, COUNTY CLERK

BY: 
Deputy



Jen. H.

2 RECEIVED AND FILED

APR 23 2013

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

) No. 20130179

Plaintiff,

v.

) COMPLAINT FOR SEARCH

) WARRANT FOR FRUITS /

) INSTRUMENTALITIES AND / OR

) EVIDENCE OF THE CRIMES OF

) RCW 9A.40.100 Human Trafficking 1st

) Degree, RCW 9A.88.080 Promoting

) Prostitution 1st Degree and/or RCW

) 9A.88.030 Prostitution

BLACK MOTOROLA CELLULAR PHONE MODEL
WX430, S/N 80DF5CC1 BEING STORED IN THE
BREMERTON POLICE DEPARTMENT'S SECURE
EVIDENCE ROOM AS ITEM # "JH" UNDER CASE
NUMBER B13-001589 IN THE CITY OF
BREMERTON, COUNTY OF KITSAP, STATE OF
WASHINGTON,

Defendant.

I, DETECTIVE RYAN HEFFERNAN, being first duly sworn upon oath, depose and say--

I am a duly appointed, qualified, and acting detective assigned to the Bremerton Police Department's Special Operations Group (SOG), and am charged with responsibility for the investigation of criminal activity occurring within Kitsap County. I have probable cause to believe, and do, in fact, believe, that in violation of the laws of the State of Washington with respect to RCW 9A.40.100 Human Trafficking 1st Degree, RCW 9A.88.080 Promoting Prostitution 1st Degree and/or RCW 9A.88.030 Prostitution, evidence and/or fruits and/or instrumentalities of said offense(s) are presently being kept, stored or possessed, and can be located and seized in the above-described cellular phone. My belief being based upon information acquired through personal interviews with witnesses and other law enforcement officers, review of reports and personal observations, said information being as further described herein--

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In July 2006, I attended 720 hours of training at the Washington State Criminal Justice Training Center in Burien, Washington. There, I received 14-hours of basic narcotics training.



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Adult Criminal and Administrative Divisions
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APPENDIX D

1 The training included instruction in drug and drug paraphernalia identification, as well as
2 identifying impairment indicators associated with specific drug use. Instruction pertained to each
3 of the seven categories of drugs: depressants, stimulants, hallucinogens, phencyclidine and
4 narcotic analgesics.

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6 Drug Enforcement Administration. The training included, but was not limited to the following:
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24 the execution of narcotics related search warrants that have resulted in arrests, and the discovery
25 of illegal narcotics and items related to the use, packaging, distribution, and manufacturing of
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7 their cellular phones to post ads on these websites, and communicate with clients and each other
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10 location that they designate, such as a motel room, or in a location determined by the client. This
11 distinction is commonly referred to as an "in" or "out" call. Because of the inherent dangers
12 associated with prostitution, pimps or their agents will often drive prostitutes to out calls and
13 remain in the area during the encounter. This practice provides a degree of perceived protection
14 for the prostitute, and allows the pimp to immediately be paid for the service. In addition to
15 driving their prostitutes to specific locations for out calls, I know from my training and
16 experience that pimps often use their vehicles as a private meeting locations to discuss their
17 criminal business enterprises, which often extend beyond promoting prostitution.

18 This affidavit is made in support of an application for a search warrant for the cellular
19 telephone described as follows:

20 **BLACK MOTOROLA CELLULAR PHONE MODEL WX430, S/N 80DF5CC1 BEING STORED IN**
21 **THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE ROOM AS ITEM # "JH" UNDER**
22 **CASE NUMBER B13-001589 IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF**
23 **WASHINGTON**

24 **PROBABLE CAUSE:** Over the course of the last several months, SOG detectives have
25 investigated the criminal activities of Anthony Parker (AKA Baby Deuce). Parker has an
26 extensive criminal history including seven felony convictions, eleven gross misdemeanor
27 convictions, three misdemeanor convictions and four "classification unknown" convictions.
28 Through the course of the investigation, Detectives learned that Parker's former girlfriend,
29 Lorena Llamas (AKA Crazy), groomed women to work as prostitutes for Parker while she
30 (Llamas) was incarcerated in the Kitsap County jail. Detectives identified one of these prostitutes
31 as Johanna Holliday. Holliday has no felony convictions, and five gross misdemeanor convictions

COMPLAINT FOR SEARCH WARRANT; Page 3



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
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(360) 337-7174; Fax (360) 337-4949

1 for the following: Theft 3rd degree, Minor in Possession/Consumption (three counts) and DUI. As
2 set forth below, Holliday used her black Motorola cellular phone model WX430, S/N 80FD5CC1
3 (hereinafter referred to as the "Phone") to communicate with Parker and clients about prostitution
4 activities. There is probable cause to believe that evidence of human trafficking, promoting
5 prostitution and/or prostitution will be found in the Phone, which is currently be stored in the
6 Bremerton Police Department's secure evidence room.

7 Through a review of jail phone calls as well as contact with confidential informants and
8 Jaccet associates, Detectives learned that Parker bailed Holliday out of jail in or around
9 December 2012, and since that time has been involved in a dating relationship with Holliday and
10 acted as her pimp. Detectives reviewed Holliday's ads for prostitution on backpage.com, which
11 list phone numbers and addresses associated with Parker. Detectives performed surveillance, and
12 confirmed that Holliday was living with Parker, and performing acts of prostitution at 1720 14th
13 St in Bremerton Washington. The residence is believed to be owned by a family member of
14 Llamas. Parker and Holliday have since moved to a residence at 703 S Summit Ave in
15 Bremerton, Washington.

16 On 4/4/13, detectives observed Holliday participate in a drug transaction with Parker's
17 associate, Travier Stevenson (AKA Little Jaccet). Detectives contacted Holliday on a traffic stop,
18 and developed probable cause to arrest her for possession of a schedule II drug, Percocet.
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20 post advertisements for prostitution on backpage.com as well as to communicate with Parker and
21 clients about prostitution. Detectives took of custody of the phone, and released Holliday.

22 On 4/8/13, detectives obtained a search warrant for Holliday's phone. Detectives
23 examined the phone, which contained numerous text messages - many to Parker - pertaining to
24 prostitution and drug activity. The phone also contained photos of Holliday that had been posted
25 on backpage.com.

26 Upon her release, Holliday obtained a new phone and continued to post advertisements
27 for prostitution on backpage.com listing the number (360) 551-9523. Detectives reviewed an
28 advertisement Holliday posted on April 11th, 2013 at approximately 1828 hours. In that
29 advertisement, Holliday posts six photographs of herself scantily-clad and in provocative poses.
30 Her "screen name" on this advertisement is "Baby Doll."

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1 Using a texting application with a fictitious name and phone number, detectives
2 contacted Holliday at the new number, and inquired if she was available. Holliday told detectives
3 that she was available, advising that the cost was \$200 per hour. Holliday also provided pricing
4 information for two girls - "125 per person," for each half hour and "200 each" for an
5 hour. Holliday said that she was available to meet at the Oyster Bay Inn, and asked detectives to
6 "grab some condoms" and "lube. Detectives met with Holliday, and placed her into custody for
7 possession of a schedule II drug, Percocet, and an outstanding warrant. At the time of her arrest,
8 ~~Holliday was in possession of the above-described Phone, which is the subject of this warrant.~~
9 ~~Detectives believe that this is the Phone that she was using to respond to the backpage.com ad.~~

10 After being provided with her Miranda rights, Holliday agreed to speak with detectives.
11 Holliday provided a taped statement, detailing her relationship with Llamas and Parker. Holliday
12 confirmed that Parker has acted as her pimp and boyfriend since he bailed her out of jail
13 approximately four months ago. Since that time, Holliday has lived with Parker and maintained a
14 dating relationship with him. Holliday told detectives that Parker helped place her ads on
15 backpage.com, responded to customers and kept nearly all of the money she made through
16 prostitution. Parker saw it all as his money, and gave it out to Holliday as he saw fit. Although
17 Parker was initially nice to Holliday and courted her as his girlfriend, he later forced her to work
18 as a prostitute seven days a week, and left her alone for days at a time in the house demanding
19 that she not spend time with her friends and family. Holliday told detectives that she lost
20 everything she ever had - friends, family, possessions etc. over the last several months at the
21 hands of Parker.

22 Holliday told detectives that she was terrified to leave Parker, and was isolated with
23 nowhere else to go. When Holliday disobeyed Parker, he verbally abused her and often beat her
24 severely. Detectives have reviewed numerous jail phone calls in which Parker berates Holliday,
25 screaming, "You need to follow my orders . . . what the fuck I tell you from right now until I get
26 the fuck out of here in three days." Parker also cautions Holliday that that "[her] money better be
27 right when I get out." Parker instructs Holliday to help with his bail saying, "Take that little bit of
28 chump change that you fucking got and give it to Jaccet." I know that Jaccet is the moniker used
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30 to hear any crying bitch. . . stop crying nigga; I want someone to be making fucking moves."
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1 In addition to verbal abuse and threats, Holliday recounted numerous instances in which
2 Parker assaulted, and imprisoned her in an effort to prevent her from leaving him. In one instance
3 in or around the middle January, Parker became infuriated that Holliday had been with Anthony
4 Flewellen, another Jaccet gang member and pimp. After scolding Holliday over the phone, Parker
5 located Holliday at Flewellen's apartment at 901 Pleasant Ave in Bremerton. Parker came to the
6 residence, and demanded to be let in. Jennifer Prerost, who was present at the residence with her
7 (Prerost's) young daughter, allowed Parker inside the residence over Holliday's protests. Holliday
8 huddled on the ground in Flewellen's locked bedroom. Parker came inside the residence, and
9 broke down the bedroom door. Parker picked Holliday up off the ground by the hair, threw her
10 against the wall and beat her face. Holliday was so terrified that she urinated in her pants. She
11 later discovered large clumps of her hair missing. Detectives spoke to Prerost, who independently
12 confirmed this account of events, telling detectives that it was one of the worst beatings she had
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15 Holliday describes this portion of the assault in great detail to Llamas, who appeared more
16 concerned about damage to the wall (Llamas mistakenly believed that the assault occurred in her
17 residence).

18 Holliday told detectives that Parker took her from Flewellen's residence against her will
19 to an unknown house on Houston Ave. Parker continued to beat Holliday about the head and face
20 while in the car, which caused her to temporarily black out. Parker told Holliday that he planned
21 to have his cousins tie her down, and torture her at the residence. Instead, Parker took Holliday
22 inside and retrieved a towel for her to clean the blood from her face. Parker then drove Holliday
23 back to 1720 14th St where he continued to abuse her for the next several hours.

24 At one point, Parker took a handgun and held it to Holliday's head asking if she was
25 ready to die. Parker made Holliday look down the chamber of the gun, which he pointed directly
26 at her face. Holliday broke down in tears as she told detectives that she was terrified for her life.
27 Parker eventually put the gun away, but continued to torment Holliday for the next several days,
28 periodically beating her and demanding that she continue to see clients despite having a black
29 eye, significant bruising and limited function of one of her arms.

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3 wall of their apartment with his fist. Parker applied such a degree of pressure that Holliday feared
4 he would break bones in her face. Holliday said that Parker treated her like a piece of property,
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6 Holliday, saying that she needed to always be on point, and Holliday lived in constant fear of
7 being assaulted, or possibly killed if she could not perform to his expectations.

8 Holliday spoke extensively about Parker's gun, which she described as a small handgun
9 with a large light on the barrel. Holliday, who is not familiar with guns, noted that it was similar
10 in appearance to a semi-automatic handgun carried by a detective. Holliday told detectives that
11 Parker referred to the gun as "Monster", and usually kept it hidden under his mattress. Holliday
12 confirmed that Parker took the gun to the couple's new residence on S Summit Ave. Holliday told
13 detectives that Parker asked her to move the gun from under the mattress to a bag in the garage.
14 Parker made the request in a phone call from the jail. Detectives reviewed the call which occurred
15 on or around 4/3/13 in which Parker tells Holliday to move "Monster" from under the mattress to
16 a duffel bag in the attached garage. Holliday told detectives that she followed Parker's
17 instructions, and placed the gun in a blue Victoria Secret clothing bag in the garage.

18 On 4/12/13 Detectives applied for a telephonic search warrant for Parker's residence. The
19 Honorable Kitsap County Judge Jennifer Forbes issued the warrant allowing law enforcement to
20 enter the residence to effectuate the arrest of Parker, and search for the firearm.

21 On 4/13/13 at approximately 1200, detectives and patrol officers went to the residence to
22 serve the warrant. Parker, who could be seen inside the residence, refused repeated demands to
23 exit. Because of the severity of the crimes and safety concerns associated with the handgun, the
24 SWAT team responded to the scene. Parker came out of the residence at approximately 1500, and
25 was placed into custody. During a search of the residence, detectives located a confirmed stolen
26 Taurus 45 caliber semi-automatic handgun S/N NBO91701 equipped with a light on the barrel in
27 a clothing bag in the garage.

28 Detectives believe that evidence contained within the above-described Phone will further
29 corroborate Holliday's criminal allegations. Holliday obtained the Phone after being placed into
30 custody by detectives on 4/4/13, and used the Phone to communicate with clients about
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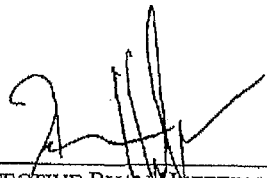


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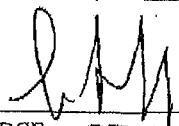
prostitution. Parker called Holliday on the Phone at the time of her arrest, and presumably sent Holliday text messages about prostitution, drugs and or other criminal activity as he had done on her previous phone. Based upon the foregoing, there is probable cause to believe that evidence of human trafficking 1st degree, promoting prostitution 1st degree and/or prostitution is currently being stored in the above-described Phone.

I respectfully request that the court issue a search warrant allowing law enforcement to search and seize the following information from the Phone:

1. All information stored in the above-described cellular phone that can be extracted through a forensic examination, or other means including, but not limited to images, video, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information relating to human trafficking, promoting prostitution and/or prostitution.



 DETECTIVE RYAN HEFFERNAN
 Bremerton Police Department

SUBSCRIBED AND SWORN to before me this 23 day of April


 JUDGE STEVEN DIXON

Distribution—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Detective)



RECEIVED AND FILED

APR 23 2013

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

No. 203070

Plaintiff,

v.

) SEARCH WARRANT FOR FRUITS,
) INSTRUMENTALITIES AND/OR EVIDENCE
) OF A CRIME, TO WIT- RCW 9A.40.100
) Human Trafficking 1st Degree, RCW
) 9A.88.080 Promoting Prostitution 1st
) Degree and/or RCW 9A.88.030
) Prostitution

BLACK MOTOROLA CELLULAR PHONE MODEL
WX430, S/N 80DF5CC1 BEING STORED IN THE
BREMERTON POLICE DEPARTMENT'S SECURE
EVIDENCE ROOM AS ITEM # "JH" UNDER CASE
NUMBER B13-001589 IN THE CITY OF
BREMERTON, COUNTY OF KITSAP, STATE OF
WASHINGTON,

Defendant.

STATE OF WASHINGTON TO- Any Peace Officer in said County

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, in violation of the laws of the State of Washington, fruits, instrumentalities and/or evidence of a crime as defined by law is being possessed, or kept, in violation of the provisions of the laws of the State of Washington, hereinafter designated and described:

BLACK MOTOROLA CELLULAR PHONE MODEL WX430, S/N 80DF5CC1 BEING STORED IN THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE ROOM AS ITEM # "JH" UNDER CASE NUMBER B13-001589 IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON

NOW, THEREFORE, in the name of the State of Washington, you are hereby commanded, with the necessary and proper assistance, to enter and search said place and to seize any fruits, *SD search & seize the above referenced phone for* ~~instrumentalities and/or~~ evidence of the crime(s) of RCW 9A.40.100 Human Trafficking 1st Degree, RCW 9A.88.080 Promoting Prostitution 1st Degree and/or RCW 9A.88.030 Prostitution, to wit-

- 1. All information stored in the above-described cellular phone that can be extracted

SEARCH WARRANT; Page 1



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

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through a forensic examination, or other means including, but not limited to images, video, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information relating to human trafficking, promoting prostitution and/or prostitution. and to safely keep the same and to make a return of said warrant within ten (10) days; with a particular statement of all the articles seized and the name of the person or persons in whose possession the same were found, if any; and if no person be found in possession of said articles, the return shall so state. A copy of said warrant shall be served upon the person or persons found in possession thereof; if no such persons are found, a copy of said warrant shall be posted upon or provided to said place where the same are found, then in any conspicuous place upon the place, together with a receipt for all the articles seized.

GIVEN UNDER MY HAND this 23 day of April, 2013

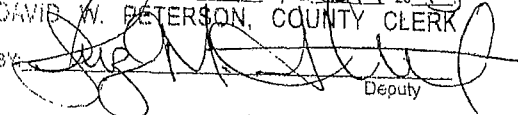


JUDGE
STEVEN DIXON

STATE OF WASHINGTON }
COUNTY OF KITSAP } SS

I, DAVID W. PETERSON, clerk of the above-entitled County do hereby certify that the foregoing instrument is a true and exact copy of the original now on file in my office.

In witness whereof I hereunto set my hand and the seal of said Court this 23 day of April, 2013

DAVID W. PETERSON, COUNTY CLERK
BY: 
Deputy





#3

RECEIVED AND FILED
APR 23 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

Defendant.

No. 20130190

) COMPLAINT FOR SEARCH
) WARRANT FOR FRUITS /
) INSTRUMENTALITIES AND / OR
) EVIDENCE OF THE CRIMES OF
) RCW 9A.40.100 Human Trafficking 1st
) Degree, RCW 9A.88.080 Promoting
) Prostitution 1st Degree and/or RCW
) 9A.88.030 Prostitution

SAMSUNG CELLULAR PHONE MODEL SPH-M580,
S/N DEC268435460810632413 BEING STORED IN
THE BREMERTON POLICE DEPARTMENT'S SECURE
EVIDENCE ROOM AS ITEM # "TP" IN CASE NUMBER
B13-001589 IN THE CITY OF BREMERTON,
COUNTY OF KITSAP, STATE OF WASHINGTON,

I, DETECTIVE RYAN HEFFERNAN, being first duly sworn upon oath, depose and say-

I am a duly appointed, qualified, and acting detective assigned to the Bremerton Police Department's Special Operations Group (SOG), and am charged with responsibility for the investigation of criminal activity occurring within Kitsap County. I have probable cause to believe, and do, in fact, believe, that in violation of the laws of the State of Washington with respect to RCW 9A.40.100 Human Trafficking 1st Degree, RCW 9A.88.080 Promoting Prostitution 1st Degree and/or RCW 9A.88.030 Prostitution, evidence and/or fruits and/or instrumentalities of said offense(s) are presently being kept, stored or possessed, and can be located and seized in the above-described cellular phone. My belief being based upon information acquired through personal interviews with witnesses and other law enforcement officers, review of reports and personal observations, said information being as further described herein-

I have been employed as a police officer by the City of Bremerton Police Department since July 2006. I have been a SOG Detective since September 2011. Prior to becoming a police officer, I served as an Assistant Attorney General for the State of Alaska. I received a BA with honors from Lafayette College (1998), and a JD from Rutgers School of Law (2002).

In July 2006, I attended 720 hours of training at the Washington State Criminal Justice Training Center in Burien, Washington. There, I received 14-hours of basic narcotics training.



Russell D. Hauge, Prosecuting Attorney
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614 Division Street, MS-35
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(360) 337-7174; Fax (360) 337-4949

1 The training included instruction in drug and drug paraphernalia identification, as well as
2 identifying impairment indicators associated with specific drug use. Instruction pertained to each
3 of the seven categories of drugs: depressants, stimulants, hallucinogens, phencyclidine and
4 narcotic analgesics.

5 In February of 2010 I attended an 80-hour basic drug enforcement class presented by the
6 Drug Enforcement Administration. The training included, but was not limited to the following:
7 pharmacology/drug ID, electronic narcotics' investigation, criminal interdiction, tactical entries
8 and surveillance procedures

9 In September 2010 I attended a 24-hour methamphetamine investigations course
10 presented by the Midwest Counterdrug Training Center. The training pertained to
11 methamphetamine lab identification, and considerations for writing and executing
12 methamphetamine related search warrants.

13 In November 2012, I attended 20 hours of training through the California Narcotics
14 Officers Association (CNOA). The course topics included instruction on informant management,
15 search and seizure issues, controlled buy and buy-bust operations, and undercover officer
16 survival.

17 During my law enforcement career, I have participated in multiple narcotics
18 investigations, which have resulted in arrests and seizures of various controlled substances
19 including Marijuana, Cocaine, Methamphetamine, Black Tar Heroin, Ecstasy, Molly and
20 Ketamine. Through these investigations and discussions with other experienced law enforcement
21 agents, I have become familiar with the methods of packaging illegal narcotics, values of illegal
22 narcotics, and terms associated with the manufacture, distribution and use of these substances. I
23 have been an affiant for approximately 25 narcotics related search warrants, and participated in
24 the execution of narcotics related search warrants that have resulted in arrests, and the discovery
25 of illegal narcotics and items related to the use, packaging, distribution, and manufacturing of
26 these substances.

27 In addition to narcotics related crimes, I have participated in investigations pertaining to
28 prostitution. Through the course of these investigations, I have interviewed numerous prostitutes
29 and pimps. I have found through my training and experience that these investigations often
30 overlap with drug investigations. Specifically, I have learned that those individuals who promote
31



1 prostitution, commonly referred to as pimps, sometimes use drugs as a means to maintain control
2 over prostitutes. It is common for those individuals who promote prostitution to pay prostitutes
3 with drugs, and withhold drugs when they are dissatisfied with performance. Pimps will often
4 utilize well established prostitutes to mentor new prostitutes, and facilitate their transition into the
5 illicit activity. I also know that pimps and prostitutes will often utilize internet websites such as
6 tncboard.com and backpage.com to advertise for prostitution. Pimps and prostitutes will often use
7 their cellular phones to post ads on these websites, and communicate with clients and each other
8 about their illicit activities.

9 I also know that people engaged in prostitution perform their services either in a fixed
10 location that they designate, such as a motel room, or in a location determined by the client. This
11 distinction is commonly referred to as an "in" or "out" call. Because of the inherent dangers
12 associated with prostitution, pimps or their agents will often drive prostitutes to out calls and
13 remain in the area during the encounter. This practice provides a degree of perceived protection
14 for the prostitute, and allows the pimp to immediately be paid for the service. In addition to
15 driving their prostitutes to specific locations for out calls, I know from my training and
16 experience that pimps often use their vehicles as a private meeting locations to discuss their
17 criminal business enterprises, which often extend beyond promoting prostitution.

18 This affidavit is made in support of an application for a search warrant for the cellular
19 telephone described as follows:

20 SAMSUNG CELLULAR PHONE MODEL SPH-M580, S/N DEC268435460810632413 BEING
21 STORED IN THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE ROOM AS ITEM #
22 "TP" IN CASE NUMBER B13-001589 IN THE CITY OF BREMERTON, COUNTY OF KITSAP,
STATE OF WASHINGTON

23 PROBABLE CAUSE: Over the course of the last several months, SOG detectives have
24 investigated the criminal activities of Anthony Parker (AKA Baby Deuce). Parker has an
25 extensive criminal history including seven felony convictions, eleven gross misdemeanor
26 convictions, three misdemeanor convictions and four "classification unknown" convictions.
27 Through the course of the investigation, Detectives learned that Parker's former girlfriend,
28 Lorena Llamas (AKA Crazy), groomed women to work as prostitutes for Parker while she
29 (Llamas) was incarcerated in the Kitsap County jail. Detectives identified one of these prostitutes
30 as Johanna Holliday. Holliday has no felony convictions, and five gross misdemeanor convictions
31



1 for the following: Theft 3rd degree, Minor in Possession/Consumption (three counts) and DUI. As
2 set forth below, Parker used his Samsung Cellular phone model SPH-M580, S/N
3 DEC268435460810632413 (hereinafter referred to as the "Phone") to communicate with
4 Holliday, Llamas and clients about prostitution activities. There is probable cause to believe that
5 evidence of human trafficking, promoting prostitution and/or prostitution will be found in the
6 Phone, which is currently be stored in the Bremerton Police Department's secure evidence room.

7 Through a review of jail phone calls as well as contact with confidential informants and
8 Jaccet associates, Detectives learned that Parker bailed Holliday out of jail in or around
9 December 2012, and since that time has been involved in a dating relationship with Holliday and
10 acted as her pimp. Detectives reviewed Holliday's ads for prostitution on backpage.com, which
11 list phone numbers and addresses associated with Parker. Detectives performed surveillance, and
12 confirmed that Holliday was living with Parker, and performing acts of prostitution at 1720 14th
13 St in Bremerton Washington. The residence is believed to be owned by a family member of
14 Llamas. Parker and Holliday have since moved to a residence at 703 S Summit Ave in
15 Bremerton, Washington.

16 On 4/4/13, detectives observed Holliday participate in a drug transaction with Parker's
17 associate, Travier Stevenson (AKA Little Jaccet). Detectives contacted Holliday on a traffic stop,
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21 clients about prostitution. Detectives took of custody of the phone, and released Holliday.

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24 prostitution and drug activity. The phone also contained photos of Holliday that had been posted
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26 Upon her release, Holliday obtained a new phone and continued to post advertisements
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28 advertisement Holliday posted on April 11th, 2013 at approximately 1828 hours. In that
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30 Her "screen name" on this advertisement is "Baby Doll."



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9 believe that Parker called Holliday from the above-described Phone.

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7 being assaulted, or possibly killed if she could not perform to his expectations.

8 Holliday spoke extensively about Parker's gun, which she described as a small handgun
9 with a large light on the barrel. Holliday, who is not familiar with guns, noted that it was similar
10 in appearance to a semi-automatic handgun carried by a detective. Holliday told detectives that
11 Parker referred to the gun as "Monster", and usually kept it hidden under his mattress. Holliday
12 confirmed that Parker took the gun to the couple's new residence on S Summit Ave. Holliday told
13 detectives that Parker asked her to move the gun from under the mattress to a bag in the garage.
14 Parker made the request in a phone call from the jail. Detectives reviewed the call which occurred
15 on or around 4/3/13 in which Parker tells Holliday to move "Monster" from under the mattress to
16 a duffel bag in the attached garage. Holliday told detectives that she followed Parkers
17 instructions, and placed the gun in a blue Victoria Secret clothing bag in the garage.

18 On 4/12/13 Detectives applied for a telephonic search warrant for Parker's residence. The
19 Honorable Kitsap County Judge Jennifer Forbes issued the warrant allowing law enforcement to
20 enter the residence to effectuate the arrest of Parker, and search for the firearm.

21 On 4/13/13 at approximately 1200, detectives and patrol officers went to the residence to
22 serve the warrant. Parker, who could be seen inside the residence, refused repeated demands to
23 exit. Because of the severity of the crimes and safety concerns associated with the handgun, the
24 SWAT team responded to the scene. Parker came out of the residence at approximately 1500, and
25 was placed into custody. During a search of the residence, detectives located a confirmed stolen
26 Taurus 45 caliber semi-automatic handgun S/N NBO91701 equipped with a light on the barrel in
27 a clothing bag in the garage.

28 At the time of his arrest, Parker was holding the above-described cellular Phone. The
29 Phone was on, and connected to "Lil Jac" or "Lil Jaccet," which I know to be Travier Stevenson.
30 Detectives believe that Parker also used the phone to call Holliday while she was being placed
31

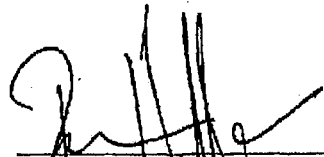


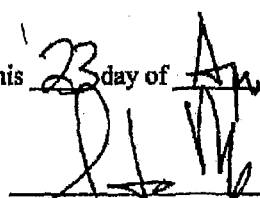
1 into custody hours earlier. In addition, Detectives believe that Parker used the Phone to
2 communicate with Llamas, advertise for prostitution on backpage.com, respond to customers on
3 Holliday's behalf and/or otherwise further his criminal activities. Based on the foregoing, there is
4 probable cause to believe that evidence of human trafficking 1st degree, promoting prostitution 1st
5 degree and/or prostitution is currently being stored in the Phone.

6 I respectfully request that the court issue a search warrant allowing law enforcement to
7 search and seize the following information from the Phone:

- 8 1. All information stored in the above-described cellular phone that can be extracted
9 through a forensic examination, or other means including, but not limited to images,
10 video, contacts, conspirator phone numbers/addresses, text messages, email messages,
11 ledgers, financial transaction information, electronic documents, or any other stored
12 information relating to human trafficking, promoting prostitution and/or prostitution.

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DETECTIVE RYAN JEFFERNAN
Bremerton Police Department

SUBSCRIBED AND SWORN to before me this 23 day of April 2020

JUDGE STEVEN DIXON

Distribution--Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Detective)



APP. G.

APPENDIX G. COMPLAINT FOR PARKER'S ARREST

A.

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

Defendant.

No. 201301109

SEARCH WARRANT FOR FRUITS,
INSTRUMENTALITIES AND/OR EVIDENCE
OF A CRIME, TO WIT- RCW 9A.36.011
Assault 1st Degree & RCW 9.41.040
Unlawful Possession of a Firearm

The residence located at 703 1/2 S. Summit Avenue described as the two story cream colored structure with white trim encompassing a garage and 2nd story apartment in the City of Bremerton, County of Kitsap, State of Washington

RECEIVED AND FILED

APR 15 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

STATE OF WASHINGTON TO- Any Peace Officer in said County

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, in violation of the laws of the State of Washington, fruits, instrumentalities and/or evidence of a crime as defined by law is being possessed, or kept, in violation of the provisions of the laws of the State of Washington, in, about and upon a certain place within the County of Kitsap, State of Washington, hereinafter designated and described;

The residence located at 703 1/2 S. Summit Avenue described as the two story cream colored structure with white trim encompassing a garage and 2nd story apartment in the City of Bremerton, County of Kitsap, State of Washington

SEARCH WARRANT; Page 1



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

ORIGINAL

2

1
2 NOW, THEREFORE, in the name of the State of Washington, you are hereby
3 commanded, with the necessary and proper assistance, to enter and search said place and
4 to seize any fruits, instrumentalities and/or evidence of the crime(s) RCW 9A.36.011
5 Assault 1st Degree & RCW 9A.1.040 Unlawful Possession of a Firearm, to wit-

6 1. Any and all Firearms , AND

7
8 2. ~~B~~ANTHONY D. PARKER 6/15/79, B/M
9 5'8" w 175 BLACK HAIR BROWN EYES

10 and to safely keep the same and to make a return of said warrant within ten (10) days;
11 with a particular statement of all the articles seized and the name of the person or persons
12 in whose possession the same were found, if any; and if no person be found in possession
13 of said articles, the return shall so state. A copy of said warrant shall be served upon the
14 person or persons found in possession thereof; if no such persons are found, a copy of
15 said warrant shall be posted upon or provided to said place where the same are found,
16 then in any conspicuous place upon the place, together with a receipt for all the articles
17 seized.

18 The said place above-referenced to, located in the County of Kitsap, State of
19 Washington, is designated and described as follows-

20 The residence located at 703 1/2 S. Summit Avenue described as the two story
21 cream colored structure with white trim encompassing a garage and 2nd story apartment
22 in the City of Bremerton, County of Kitsap, State of Washington
23

24
25 GIVEN UNDER MY HAND this 12th day of APRIL, 2013

26
27 JENNIFER FORBES

28 JUDGE

29 SIGNED S/ RYAN HEFFERMAN
30 BY



APP. D.

APPENDIX D. REPORT OF PROCEEDINGS

1 A. Baby Deuce.

2 Q. And who did the house belong to that you were staying at at
3 that point?

4 A. Lorena Llamas's family.

5 Q. And whose belongings were in the house?

6 A. Tony's, Lorena's, and another girl who had just moved out.

7 Q. And tell me about that first week with Tony Parker. Tell me
8 what that was like.

9 A. I don't really remember. It was just pretty low-key.

10 Q. At some point did you start to have discussions with Tony
11 Parker about prostitution?

12 A. Yes.

13 Q. Can you tell me how that came up?

14 A. Well, initially, when I had gotten bailed out, I wasn't
15 necessarily planning to prostitute. I would have rather
16 made money in a different way. If I could come up with
17 money a different way, I was going to do that. And those
18 plans did not work out like I wanted to, so I had brought up
19 prostitution to him.

20 Q. And during that first week that you were with him, did you
21 have discussions with Tony Parker about prostituting?

22 A. Can you repeat that question? I'm sorry.

23 Q. During that first period of time, the first week or so that
24 you were living with Tony Parker, did you have discussions
25 about prostitution with him?

1 in there."

2 Q. Could you hear him saying that?

3 A. Yes, I heard him say that.

4 And I heard him telling Jennifer that she needs to open
5 the door and that he's not going to do anything to her.

6 Q. And what happened at that point? Or what was the tone of
7 Anthony Parker's voice?

8 A. Extremely angry and aggressive, threatening kind of, telling
9 Jennifer that she better open the door and that he wasn't
10 going to do anything to her.

11 Q. What happened from there?

12 A. I went from the bathroom across to the other side of the
13 apartment, to Blacc Jaccet's bedroom. I locked the door to
14 his bedroom and I sat against the door.

15 Q. Why did you go into that back room?

16 A. Because I knew that Tony would be able to get into the
17 bathroom easier.

18 Q. And what happened after you locked yourself in the bedroom?

19 A. Jennifer had let him in and he came straight to -- he came
20 looking for me right away. And he had wiggled the doorknob
21 to Blacc Jaccet's room and noticed that it was locked or
22 couldn't open it, and so he slammed into it, breaking open
23 the lock, and I was sitting behind the door.

24 Q. And how were you positioned behind the door?

25 A. I was sitting down with my knees up, hands around my knees.

1 Q. Why did you have to keep the door open?

2 A. Because he told me to.

3 Q. Did he tell you why?

4 A. No.

5 Q. Could people see you while you were in the bathroom washing
6 up?

7 A. I think there was one person, not the entire time, but there
8 had been one person that had walked by in the hallway, that
9 he would have been able to see me.

10 Q. How long were you at that house?

11 A. I was probably inside the house for less than ten minutes.

12 Q. Did anything else happen in the house?

13 A. Nothing other than him -- he said that he wanted to tell his
14 friends pretty much how awful I was and what I had done and
15 that I went and hung out with Blacc Jaccet.

16 Q. Did any of his friends ever touch you or harm you?

17 A. No.

18 Q. Why did you leave the house?

19 A. Because he needed to take me home.

20 Q. Who told you you were leaving the house?

21 A. He did.

22 Q. And where did he tell you to go?

23 A. To get back in the car.

24 Q. And what happened from there? Did you get back in the car?

25 A. I got back in the car and he took me home.

1 Q. While you were in the car, did you ever think about getting
2 out of the car?

3 A. Before we arrived at the girl's house who we dropped off --
4 or when we arrived at her house, when he told me to get in
5 the front seat, we were in a neighborhood and I was going to
6 jump out, but there was no people out there and I was scared
7 that if I jumped out and ran and screamed for help, that no
8 one would hear me and it would end up worse than if I just
9 got in the front seat.

10 Q. Did anything happen on the road home from his friend's house
11 to your house where you were staying?

12 A. Not that I remember.

13 Q. Once you got back to the house you were staying at, what
14 happened there?

15 A. Um, I went into the bedroom, and he asked me what I was
16 doing. I said that I needed to change because my pants were
17 wet. And he said that was okay. And afterwards, I went and
18 I sat on the bed -- and he was in the living room -- and he
19 told me that I couldn't sleep in there, I couldn't lay down,
20 that he wasn't done with me, and that I needed to sit in the
21 living room with him on the couch and be seen at all times.

22 Q. What was he doing while you were sitting on the couch?

23 A. He sat on the couch, too.

24 Q. What happened from there? Did he continue to yell at you?

25 A. Yes. He was off and on. At some moments, he would ask me

1 custody, and I left and I was with a girl, Alicia, buying
2 pills. We went and bought some pills from one of Tony's
3 associates, Little Jaccet, and we were being watched. And
4 Detective Heffernan and some police had pulled us over. And
5 Alicia was put in one of the cop cars and I was put in
6 another. And Detective Heffernan is the one that approached
7 me and talked to me.

8 Q. Did he arrest you and take you to jail that day?

9 A. No.

10 Q. What was he wanting from you?

11 A. He wanted information about Tony.

12 Q. Did you provide him that?

13 A. No. I told him that I was uncomfortable. And most of that
14 was actually out of fear from Tony telling me to never be in
15 contact with the police. I tried to get out of it and I
16 told Detective Heffernan that I did not feel comfortable
17 talking to him about anything. And he had told me that if I
18 met him tomorrow or the next day by the house on 14th Street
19 and told him what was going on, then he would let me go with
20 the agreement that I handed over my pills that I bought and
21 my cell phone for evidence.

22 Q. Did you hand those things over to Detective Heffernan?

23 A. Yes.

24 MS. SCHNEPF: Showing defense counsel Exhibit No.

25 12.

1 just take a look through those. Do you recognize those text
2 messages?

3 A. Yes.

4 Q. What are they from?

5 A. Some are from Tony. And most of them are unknown numbers,
6 or they're not in my phone book, of people wanting to see
7 me, dates.

8 Q. And were those text messages that you recognize from your
9 other phone?

10 A. Yes.

11 Q. And now that you have had a chance to look at that, do you
12 remember what you had him listed as under your phone?

13 A. Yeah. "My B."

14 Q. How long was Tony in custody for during that particular
15 incident?

16 A. Three days.

17 Q. Did he know that you had contact with the police?

18 A. Not until he got out.

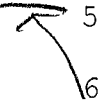
19 Q. What happened when he got out? Tell me how that happened.

20 A. I didn't meet with Detective Heffernan the next day when I
21 was supposed to. I stayed inside the house. I didn't have
22 a phone. And I stayed inside the house until I knew Tony
23 was getting out on, I believe, a Saturday, I think. And I
24 waited inside the house.

25 He pulled up to the house and knocked on the door and I

1 A. It was very just off and on. He was either nice to me or
2 extremely rude. He told me that I was worthless because I
3 couldn't make money for him anymore and that he loved me but
4 he could fall out of love with me in an instant and find
5 another bitch to take my place. And he would tell me that I
6 couldn't post ads anymore and he didn't know what he was
7 going to do with me, that I was just pretty much useless to
8 him and he was -- Oh. He told me that because I made the
9 stupid choice of leaving the house when he told me not to
10 when he was in custody, that I was the one that got them
11 into this mess because the detectives pulled me over because
12 I was a dope fiend and I couldn't go without my pills.

No more Ads



13 He would tell me to pack up my stuff and go. And I
14 would beg him to not do that, to not make me leave, and that
15 I needed to at least get my stuff together. And he would
16 push me out the door. And I knocked on the door and begged.
17 I didn't have shoes on, I didn't have my purse. And I
18 knocked on the door begging him to let me in to at least get
19 my stuff. And then I would start getting my stuff together
20 and he would tell me not to get my stuff and to make him a
21 sandwich. And so I would go into the kitchen to start
22 making him a sandwich and then he would yell and ask me --
23 yell from the other room and ask what I was doing and to get
24 my stuff together again. It was very off and on and I
25 didn't know what he wanted from me, but I was trying to do

1 Q. How was he hitting you?

2 A. He punched me in the arms and legs and hit me across the
3 head and the face. A lot of it was often open-handed.

4 Q. How hard was he hitting you?

5 A. Extremely hard. Well, hard -- it was hard for me. It was
6 hard to me.

7 Q. Was it painful?

8 A. It was painful and it was enough to swell up my face.

9 Q. When was the last time he assaulted you?

10 A. April 12th of this year.

11 Q. How do you remember that date so distinctly?

12 A. Because I hadn't posted any ads that week after I had
13 contact with the detectives. And after Tony's abuse and
14 telling me that he would kick me out, I decided to post an
15 ad so that I could make him happy and give him some money
16 and so that he would stop tearing me down. And so I posted
17 an ad and I went to a couple of calls. And that is when the
18 detectives had set me up.

19 Q. When did the assault occur on that day?

20 A. Before I left the house to do calls. I told him that I
21 posted some ads. He was still very irritable and aggressive
22 with me because of what happened earlier that week. And he
23 said that he was going to the grocery store and that I
24 needed to come with him. And I told him I didn't want to
25 go, that I had posted my ad the night before and that I

April 12
She posted Ad

1 would have calls coming. And I hadn't showered and I was
2 withdrawing from drugs and I didn't want to go to the store.
3 And he told me that I had to go with him to the store or I
4 had to leave the house; I couldn't stay in the house by
5 myself anymore. And I was angry and I told him that I would
6 go to the house and wait; I had a call coming. I lied to
7 him and told him that I had a call coming so that I wouldn't
8 be able to go to the store with him, because the call would
9 already be at the house waiting for me. So we got in a cab.
10 And when he got dropped off to the -- Oh. And so he gave me
11 permission to go to the house and that I would have to find
12 a way. I called --

13 Q. Where were you taking your calls?

14 A. At the 14th Street house.

15 Q. So you were living at the Summit house but you were still
16 taking your calls and dates at 14th Street?

17 A. Yeah. There were a few times where I would take the calls
18 at the Summit house, when I couldn't get to the 14th Street
19 house.

20 Q. When you told him you had a call on the way, you meant that
21 you had to go to the 14th Street house?

22 A. Yes.

23 Q. Okay. So tell me what happened.

24 A. So he told me that I could leave if I had a ride or had
25 someone come get me. I called a friend and asked if she

1 could come and pick me up, and she said that she couldn't,
2 but that she was nearby, by the 14th Street house, if I
3 wanted to meet her there. And I told her that I would just
4 call my -- There was a taxi driver that would give me pretty
5 good deals; he wouldn't charge me a lot just to take me a
6 couple of miles to the 14th Street house. So I would
7 usually call him for the rides. And I said -- I told her on
8 the phone that I would call my cab guy, is what I said, I
9 would call my cab guy for a ride, and he overheard, Tony
10 overheard me saying that, and he slapped the phone out of my
11 hand, it hit the wall and hung up. And from there, he
12 started hitting. I was sitting on the couch and he was
13 standing, and he started hitting me in the face, in the
14 body, telling me that I was stupid and why would I call a
15 cab driver, because he thought I was referring to -- He
16 misunderstood who I was talking about when I told her I was
17 calling my cab guy. He thought I was talking about a
18 different cab guy who had just been arrested for drugs. So
19 he started beating me because he thought that I was talking
20 about someone else.

21 Q. And where was he hitting you?

22 A. He hit me across the face and the head and the arms and the
23 legs.

24 Q. Was his hand open or closed?

25 A. I think open. But then I started -- I put my arms up and

1 was begging him to stop, and it got to a point where I was
2 leaning over onto the couch so that, eventually, I was laid
3 down on the couch and he was standing over me and he
4 began -- he took his fist and crushed it against my face
5 into the couch.

6 Q. What kind of force was he using when he did that?

7 A. A lot of force. I thought that he was going to break my
8 face. I was scared and I couldn't get out of it.

9 Q. What happened after that?

10 A. I got a small bag together. I was planning on leaving.
11 Which is why I lied to him and said I was going to go to the
12 14th Street house for calls.

13 We got in the cab together and we got to the store. And
14 from my understanding, he was allowing me to go to the 14th
15 Street house when he got dropped off at the store. When it
16 came time and we stopped at the store, he told me to get
17 out. I didn't want to cause a scene with the cab driver
18 there and so I got out of the car with him. I told him that
19 my -- I begged him again and I told him that my call was
20 coming and I need to shower; can I at least go back to the
21 house. And he gave me the keys to the Summit house. I
22 quickly took the cab back to the house and put the keys
23 under the mat so that he could get in, and I went straight
24 from the Summit house to the 14th Street house and called my
25 friend and told her she needed to come pick me up right

1 away. And I went across the street by the high school and I
2 hid in a parking lot and waited for her to come get me.

3 Q. Did she come get you?

4 A. Yes.

5 Q. Where did you go from there?

6 A. We went to Oyster Bay Inn in Bremerton.

7 Q. And what did you do at Oyster Bay Inn?

8 A. She had somebody she knew that was staying there and he said
9 that I could stay there until I figured things out and that
10 he would go get my belongings if I needed and that I didn't
11 need to go back to that; everything would be taken care of.
12 And I told him that I would give him some money if I could
13 take a couple of calls at the hotel room so that I could
14 have some money in my hand so I wouldn't be stranded on the
15 street or had nowhere to go.

16 Q. Did you post an ad then?

17 A. Yeah, I posted an ad. I think I posted an ad the day
18 before, but I was still receiving calls.

19 Q. Did you set up calls at that point?

20 A. Yes.

21 Q. And who showed up when you set up the calls?

22 A. The first call that I was supposed to have at the hotel
23 ended up being the detectives.

24 Q. What happened when the detectives showed up?

25 A. They came into the room and they arrested me and brought me

*April 22 she post Ad
for herself*

1 downstairs. I didn't bring any of my belongings, the bag
2 that I had brought or my purse. They brought me downstairs,
3 outside, to wait for the police car to take me to jail
4 because I was still getting charged for the week before for
5 buying pills. And I had told them then -- because,
6 initially, I had planned on already leaving Tony that day --
7 when they arrested me, I told them that I would talk to them
8 and tell them everything.

9 Q. And did you tell them everything that day?

10 A. Yes.

11 Q. Were you still taken to jail?

12 A. Yes.

13 Q. Are you on a diversion agreement for those charges?

14 A. Yes.

15 Q. Is part of your diversion agreement that you would testify
16 today?

17 A. Yes.

18 Q. Are there other requirements to the diversion agreement?

19 A. Yes.

20 Q. What kind of other requirements are there?

21 A. To not -- I can't get any other charges during the diversion
22 period; I need to do some type of chemical dependency
23 treatment and check-ins with the probation.

24 Q. Okay. Do you also have a theft-three conviction from 2011?

25 A. Yes.

1 A. I'm not positive. Tony told me that he was going to move
2 his stuff to the Summit house, and I asked if I could come
3 with.

4 Q. You asked if you could go with him.

5 At that point in time, was he living with his wife?

6 A. No.

7 Q. Okay. At that point in time, was he just going to leave you
8 there at Lorena Llamas's house?

9 A. No. He told me that I would go with him.

10 Q. That you would go with him.

11 But at that point in time you had a choice, didn't you?

12 A. Yes.

13 Q. You could have stayed there and left, right?

14 A. Yes.

15 Q. And you chose to leave, right?

16 A. Yes.

17 Q. And there's a person kind of pulling the strings, isn't
18 there, and her name is Lorena Llamas, wouldn't you say?

19 A. No.

20 Q. No? Okay.

21 She's the one that owns the house, she's the one that
22 talked to you initially in custody, she's the one who you
23 put money on her books. How is it that she has this kind of
24 power over you while she's in custody?

25 A. She didn't have power over me. I didn't do the things that

1 A. Um, relied on? For what?

2 Q. For protection.

3 A. Yes.

4 Q. You thought he could protect you from Lorena Llamas and her
5 family?

6 A. Yes.

7 Q. Now that Mr. Parker is gone, are you afraid of her family?

8 A. No.

9 Q. Are you afraid that they might get you?

10 A. No.

11 Q. Are you still angry with Mr. Parker?

12 A. Yes.

13 Q. Are you angry with him for going back to his wife instead of
14 being with you?

15 A. Yes.

16 Q. Did Mr. Parker ever lie for you?

17 A. Yes.

18 Q. Did he ever make up stories for you?

19 A. I don't know.

20 Q. Did he ever lie to Lorena Llamas over the jail phone for
21 you?

22 A. Yes.

23 Q. On numerous occasions?

24 A. Um, yes.

25 Q. And this was to protect you, right?

1 A. I was in the area of a known establishment that we are aware
2 that many of these people involved with this investigation
3 and other drug investigations frequent, when I observed
4 Ms. Holliday with another male in a vehicle. And what I
5 observed was Ms. Holliday driving in this vehicle with this
6 male, and there was another female following close behind
7 them, who I also recognized, in another vehicle. They
8 stopped on a side road, which, again, was not a normal place
9 for them to stop. Ms. Holliday exited the vehicle, got into
10 the vehicle with the female, and at that point, it was
11 apparent to me that it was a short visit, which is typically
12 something that is indicative of a drug deal.

13 Q. Did you make contact with her?

14 A. We did.

15 Q. And how did that come about?

16 A. I immediately, like I said before, I had Detective Heffernan
17 on the phone, was letting him know what was going on, we
18 arranged for a patrol officer to make a stop on the vehicle
19 driven by the other female, and we contacted both
20 Ms. Holliday and the female at that time.

21 Q. And who was with you at that point?

22 A. With me? I was by myself in my own vehicle, Detective
23 Heffernan was in his vehicle, and I believe there was a few
24 other patrol officers that assisted us in making the traffic
25 stop.

1 Q. Did you arrest Ms. Holliday at that point?

2 A. I believe we detained Ms. Holliday, but she was not taken
3 into custody, no.

4 Q. And when you say "detained," what do you mean by that?

5 A. By detained, I believe she may have been put in handcuffs
6 and she was not free to leave from the scene. The same
7 thing with the driver of the vehicle. They were not under
8 arrest, but they were just being held there for questioning.

9 Q. Okay. And when you did make contact with her, did you see
10 any narcotics?

11 A. I didn't contact Ms. Holliday. I contacted the driver of
12 the vehicle.

13 Q. Okay. Did you have any discussion with Ms. Holliday?

14 A. I believe Detective Heffernan spoke with Ms. Holliday at
15 that incident.

16 Q. Do you recall whether any evidence was collected --

17 A. Yes.

18 Q. -- from Ms. Holliday?

19 A. From what I recall, there was, I believe, drug paraphernalia
20 and perhaps one Percocet pill was recovered from
21 Ms. Holliday.

22 Q. What about a cell phone?

23 A. Yes, her cell phone as well.

24 Q. Was that something you recovered or Detective Heffernan?

25 A. Those items were all recovered by Detective Heffernan.

1 Q. Did you end up taking Ms. Holliday to the station or booking
2 her on that day?

3 A. No. We did the interview. I interviewed the other female.
4 Detective Heffernan interviewed Ms. Holliday at the scene of
5 the traffic stop.

6 Q. And what was the reason why you didn't book her?

7 A. I believe we wanted her -- we were looking for cooperation
8 and I believe we had a -- she made an agreement with
9 Detective Heffernan to meet up the following day for a more
10 thorough interview.

11 Q. And did she show up that following day?

12 A. She did not.

13 Q. Now, pointing you to a couple weeks later, did you set up
14 another way to contact Ms. Holliday?

15 A. We did. About a week or so later, we, Detective Sergeant
16 Plumb and I, decided to -- We were aware that Ms. Holliday
17 had created a posting and we set up a sting operation in a
18 way to contact Ms. Holliday.

19 Q. And where did that contact come about?

20 A. That contact occurred at the Oyster Bay Inn on Kitsap Way in
21 Bremerton.

22 Q. And can you just describe your involvement?

23 A. My involvement on that, I was -- At the time, I was
24 conducting surveillance of the South Summit house that I
25 mentioned before. We believed that Ms. Holliday was perhaps

1 idea of what was going on and that I kind of wanted to talk
2 to her about it. You know, obviously, the side of the road
3 at night in the back of a patrol car isn't the best place to
4 do that, so I tried to talk to her about finding someplace
5 that would be safer for her to do that.

6 Q. Okay. And at that time did you arrest her, did you take her
7 into custody?

8 A. You know, we did detain her. I don't know if you would
9 consider it an arrest-and-release or we just detained her.
10 We did develop probable cause to arrest her that night for
11 possession of a pill. But she was not ultimately taken to
12 jail.

13 Q. And was there another reason in terms of why you didn't book
14 her on that night?

15 A. You know, our real concern for her were the safety concerns.
16 At that time, Mr. Parker was in custody and I knew she
17 wasn't going to be going back to him that night, and that
18 definitely was an important reason that I let her go that
19 night.

20 Q. And what was your conversation in terms of maybe when you
21 would meet up and she would be able to talk in a safer
22 environment?

23 A. Talked to her about meeting the next day, either -- I don't
24 know where we were -- I know where I was going to pick her
25 up. But someplace that she felt a little more comfortable

1 with, you know, kind of away from everything.

2 Q. And did she appear?

3 A. No, she did not.

4 Q. If you could just on the timeline indicate when, under the
5 drug contact, when that occurred? It's towards the bottom
6 there.

7 A. (Witness complied with counsel's request.)

8 Q. So after she, I guess, failed to cooperate, what was the
9 next step? There's been some testimony about a sting that
10 was set up.

11 A. Yeah. You know, we tried that cooperation route, initially,
12 and, you know, at that point, you know, that wasn't
13 effective. So when she posted, when Ms. Holliday posted
14 another ad, we responded to the ad posing as a John and set
15 up a meeting with her.

16 Q. Based on your training and experience, when it comes to
17 these human trafficking cases, is that surprising that she
18 wouldn't come and cooperate the next day?

19 A. No. Unfortunately, it's not surprising at all.

20 Q. What about the fact that, at that point, the defendant was
21 actually in custody, does that change anything?

22 A. No, not necessarily. And at that point I had reviewed so
23 many jail phone calls that that makes no difference.

24 Absolutely none.

25 Q. And what would be a reason, based on your training and

1 A. Yes, I think that's accurate.

2 Q. That's accurate to say.

3 You oversaw everything, right?

4 A. I did.

5 Q. Okay. Let's go first off to the firearm in the evidence
6 here. Did you take -- Showing Exhibit No. 20A, did you look
7 at or examine Exhibit No. 20A?

8 A. I had seen it, yes.

9 Q. And did you try and recover any fingerprints off of Exhibit
10 No. 20A?

11 A. I personally did not do that. I requested our evidence tech
12 to do that.. She has specialized training for it.

13 Q. Did they do that?

14 A. They did try to.

15 Q. Did they retrieve any fingerprints off of that?

16 A. They performed a test and they were unable to retrieve any
17 fingerprints from it.

18 Q. Okay. We have Exhibit 20, the pistol. Did you have the
19 same test performed on that?

20 A. I did request that, and it's my understanding that she
21 performed that test.

22 Q. And how did those tests come out?

23 A. There were no fingerprints located on the firearm is my
24 understanding.

25 Q. Okay. Did you have the same thing done on the bag that the

1 A. No, I did not.

2 Q. -- at any point in time during the search?

3 A. No, I did not.

4 Q. At any point during the search did you locate any narcotics?

5 A. We do not -- We located a scale that may have had residue on
6 it. I don't recall like any substantial amount of
7 narcotics, no.

8 Q. Did you take any -- or if I can hand you up here what's been
9 listed as exhibits, multiple exhibits here, 34 through 21.
10 These are the pictures that were taken, I believe, by you
11 and some other police officers. Do you see any pictures of
12 that scale that was confiscated?

13 A. To clarify, the scale was not confiscated.

14 Q. Oh, it wasn't confiscated.

15 A. I did see a scale at one point, I believe.

16 Q. Okay. And why wasn't the scale taken?

17 A. The search warrant didn't cover it. I suppose we could have
18 taken it if I immediately recognized it as contraband. I
19 can't recall if there was anything on it. Like as far as
20 residue, there may have been. But we weren't really there
21 to collect a scale.

22 Q. Is a scale contraband?

23 A. Not in and of itself, no.

24 Q. Not in and of itself.

25 What would make a scale contraband?

*The search warrant
didn't cover my
cell phone either*

1 it's cumulative. We don't have an objection, I guess.

2 THE COURT: All right. One through four are
3 admitted.

4 MR. WAREHAM: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 Just for the record, two and four are already admitted.
7 So one and three --

8 MR. WAREHAM: One and three are admitted.

9 THE COURT: -- are admitted.

10 MR. WAREHAM: All right. Sorry, Your Honor. My
11 fault there.

12 THE COURT: That's okay.

13 (Exhibits 1 and 3 admitted.)

14 Q. Okay. I'm going to show you what's been labeled -- I'm
15 going to leave 16A there -- what's been labeled State's 15
16 and 16, and can you tell me what these two are?

17 A. Fifteen are the photos that we took of Mr. Parker's phone
18 that was seized from him the night of the search warrant.
19 And I believe this is the phone, but let me just -- It is
20 the phone.

21 Q. That is the phone?

22 A. Correct.

23 Q. Okay. I'm going to retrieve the phone from you. But I
24 believe these were previously admitted. And would you mind
25 reading those to us, the messages?

*SO WARRANT
BE PHONE*
*SO WARRANT
BE PHONE*

A. Right. Some of the pictures remained. It is possible it's a reference to that. Some of the pictures were ongoing throughout.

3

Q. Okay. And go ahead and flip the page.

4

A. This is the trash section of the e-mail account.

5

Q. Okay.

6

A. And it just lists "Backpage response," "Backpage response," "Backpage response."

8

Q. And how were you able to get into the e-mail account?

9

A. It was already on it. I mean, there was no code or anything. It was already ...

10

Q. Okay. And did you have a search warrant in order to get into that?

11

A. We did. We had a search warrant for the phone which we obtained on the 23rd of April.

12

Q. Okay. And if you can flip over to the next page there?

13

A. These are pictures that were in many of the Backpage ads and it looks like it was part of the posting process.

17

Q. Okay. And who are the pictures of?

18

A. Ms. Holliday.

19

Q. Okay. And does it indicate who took any of those pictures on the phone or can you tell?

20

A. No, it does not.

23

Q. Okay. Flip it over.

24

A. That's it.

25

*NO WARRANT
Filed about it*

1 A. Twelve is the phone that was taken from Johanna Holliday on
2 the 4th, and eleven are photos of the phone or some of the
3 text messages and whatnot in the phone.

4 Q. Okay. And was this the phone that was taken from her when
5 she was stopped and arrested due to the drug stop or when
6 she was ultimately arrested at the Oyster Bay Inn?

7 A. No. As I said, this was the phone taken from her on the
8 4th. So during the traffic stop.

9 Q. I'm sorry. I didn't hear you.

10 Okay. And I have got one other question for you. Is
11 there any other way to post ads on Backpage other than with
12 your cell phone?

13 A. Yes.

14 Q. How?

15 A. You need a computer.

16 Q. So you can do it pretty much with any computer?

17 A. Yes.

18 Q. And how would you get the pictures onto the computer in
19 order to post them onto Backpage?

20 A. You know, I don't know, to be honest with you.

21 Q. You don't know?

22 A. No, I don't. I know you can do it on a computer, but I'm
23 not the expert on that.

24 Q. You are not the expert?

25 A. No.

1 So he slammed into it, breaking open the lock, and I was
2 sitting behind the door. Not breaking open the door.
3 Breaking open the lock. But we don't know what is going on
4 quite there.

5 And I was sitting behind the door. And your position
6 behind the door? I was sitting down with my knees up, hands
7 around my knees. At that point, what were you feeling?
8 Afraid.

9 So Jennifer had let him in and he came straight back to
10 her. That, in and of itself, when you let somebody in your
11 house and say, come on in, that's a license. It's a license
12 to let them in your house. So their burglary falls apart.
13 The missing element, all right, whether he had permission.
14 That's the missing element there.

15 The charge here turns on the reliability of Holliday,
16 right? A person who admits to being high during the entire
17 time. Also, she did say she went willingly into the car
18 or her testimony didn't change from the next day. Remember,
19 she has a lot on the line here, right? She says she went
20 into the car, went willingly.

21 Pictorial evidence. There is none. Right? Lots of
22 pictures. Pictures of phones, pictures of this, pictures of
23 Ms. Holliday, pictures of a search warrant. Not one picture
24 of a broken door. The doors are flimsy. And she did not
25 have a great recollection. Also, they don't know when it

1 happened. They can't put a date on it. And as the person
2 stated, the handyman, the doors break all the time. Again,
3 missing people and witness.

4 ~~Kidnapping in the first degree.~~ Was he kidnapping her
5 or bringing her home? I would contend that he was bringing
6 her home? He wasn't kidnapping her. She went willingly
7 with him. There's no intent to kidnap her. Okay. And why
8 do I say that? The State wants you to believe that
9 Mr. Parker viewed her as an asset. But if he viewed her as
10 an asset, it's not a very good asset. She's losing money
11 for him. My contention is, is that Mr. -- what the evidence
12 here is showing, Mr. Parker didn't view her as an asset. He
13 viewed her as a girlfriend. Not necessarily the way that we
14 might think of a girlfriend. Maybe they're not acting the
15 way that we might treat our girlfriend. But then again, we
16 don't use large amounts of drugs; we aren't involved in this
17 type of lifestyle.

18 Okay. She goes on to testify here. All right. How
19 long of a drive was it from Blacc Jaccet's house to this
20 woman's house? So there's this missing woman, this missing
21 witness. Probably ten minutes. Tell me what happened after
22 he dropped her off. He told me that I had to get to the
23 front seat, and I begged him to not make me.

24 Well, once again, she's got to put together a good
25 story. Put it together, right? How is it that she

1 those text messages? She started breaking down at certain
2 points because of how abusive those text messages are to
3 her. She looks back at this time and she is completely
4 ashamed of herself. But she has to get up here in front of
5 strangers and talk about herself having sex with people like
6 John Buckner, up to ten calls a day, sitting here while the
7 defendant is staring at her, someone who has put a gun to
8 her face.

9 There's a lot by the defense talking about the
10 concussion, talking about our expert. That involves one
11 count. So you heard from Johanna. She saw stars. You
12 heard from the expert who, yeah, unfortunately, Johanna was
13 too terrified and too scared to go to anybody. It would
14 have been nice if she would have gone to the hospital. They
15 would have automatically reported it. We don't get the
16 benefit of that. We get an expert opinion based on what she
17 read on this case. She told you what her conclusion is
18 based on that. That involves one count.

19 Intent was brought up a lot by the defense. Don't get
20 confused by intent and the definition of intent. Intent
21 means you know what you are doing. You are not blacked out.
22 You know, you are not so intoxicated that you get up in the
23 middle of the night and pee in the corner. That's
24 unintentional. It doesn't have to be premeditated. Intent
25 means you know what you are doing. You are intentionally

APP. E.

APPENDIX E. SAG

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
Respondent,

v.

ANTHONY DEWAYNE PARKER
Appellant.

PRO SE SUPPLEMENTAL BRIEF
PURSUANT TO RAP 10.10 STATEMENT OF ADDITIONAL GROUNDS

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Sally Olsen

Anthony D. Parker
#776122 C-Unit
Clallam Bay Corr. Cntr.
1830 Eagle Crest Way
Clallam Bay, WA 98326

A. SUPPLEMENTAL FACTS.

While incarcerated on unrelated charges Johanna Holliday and Lorena Llamas became good friends. RP 447. They discussed ways for Holliday to make money being that she had no place to go upon her release. Llamas told Holliday about her friend Anthony Parker, and that he could be the one to help her out. RP 448-449.

Eventually a deal was struck for Parker to bail her out of jail for a possible business venture. RP 451-452. On **December 6, 2012** Parker bailed Holliday out of jail, the day they met for the first time. RP 454-455.

Holliday planned to do other things to make money, and when those plans failed brought up prostitution as a source to Parker. RP 457,,. Holliday went on her first date or call to prostitute soon after but made no mention of a specific date or time. RP 466.

In the beginning things went well, Parker treated her real nice. RP 469. He bought her things and made sure she was comfortable. RP 456-459.

Sometime in late December, January, or early February 2013, during the time of Holliday's court hearings in Kent, Washington, the assault allegedly occurred. RP 482-484.

During the altercation, Jennifer Prerost had let Parker into a home owned or rented by Prerost and her Boyfriend Anthony Flewellen. RP 486-487. Parker entered the home and went looking for Holliday

"right away". RP 494.

Parker went to the back bedroom, and begin to knock on the door. RP 495-496. Parker allegedly grabbed Holliday by her hair and threw her across the wall. RP 496. He told her to get up and get out of the house. RP 496. Eventually Holliday walked "straight out of the house". RP 497. On the way to the car she noticed Jennifer Prerost standing next to the car door with her daughter in her arms.¹ RP 497.

On the way home Parker allegedly beat her. RP 499. At some point they stopped at some friends and then proceeded home. RP 503-504. There he continued to beat her and verbally abuse her. RP 505, 509-510. Parker forced Holliday to stay awake until he went to sleep on the couch. RP 510. Holliday stated that she too went to sleep. RP 509.

The next day Parker was calm and Holliday apologized and continued to go out on calls, to turn tricks for money. RP 510. At no time could Holliday attribute the assaults to any specific date and time.

While being let out to prostitute, Holliday bought pills to get high on the money she made. RP 511. During this period of time Parker would leave the house for long periods of time. RP 524-526. On one of these occasions Holliday called her friend Alisha for a ride to buy some percocet pills. RP 532-533. On April 4, 2013, after buying the pills, the police pulled Holliday and Alisha over during a traffic stop. RP 534-535. The officer's detained Holliday, searched her where the

2.

1. APPELLATE COUNSEL STATED IN HIS BRIEF THAT PARKER DRAGGED HOLLIDAY OUT OF THE HOUSE. WHICH WAS INCORRECT.

pills were found. RP 534-535. Without consent from Holliday the police seized her cell phone and the drugs. RP 812-814. She was not taken to jail for the drugs because she had agreed to meet with the police later. RP. 812-814, 890. Holliday told Parker that the police had taken her cell phone while she was out working. Id. About a week later on April 12, 2013, Holliday posted another ad on Backpage.com. RP 538-540. A sting was set up to apprehend Holliday when she answered the call. RP 891. Within a short time she got a response and agreed to go to the Oyster Bay Inn in Bremerton to meet the customer who called. RP 541-543. When she entered the motel room with the customer she found out that he was a police officer. RP 541-543, 814-818.

Two more officers then entered and arrested her,. They seized her second cell phone, without her consent to search, and took her to the police station where she eventually gave them a lengthy statement about her activities with Parker. Id. RP 819-821, 899-900.

After the interview the police obtained a search warrant, to search the house on 14th based upon Holliday's statements. RP 819-821, 903-904. (CP. Search Warrant attached as App. A. to this Suppl. Brief).

The scope of the warrant was to arrest Parker, and locate a firearm. During the arrest, the police found the weapon in question but also seized Parker's cell phone without his consent. RP 904.

Post Arrest

After Parker was arrested and taken into custody, the Bremerton Police began to build their case. Most of the evidence

compiled came from the Seized cell phones of Holliday and Parker.
RP 993--995, 997, 1000, 1001, 1004-1007, 1010-1012, 1032-1033.

Detective Ryan Heffernan gleaned from both cell phones that Holliday was working for Parker, and used the photos and e-mails to show proof of prostitution and human trafficking. RP 1032.

However, Heffernan did not obtain consent to search the cell phone taken from Holliday on the 4th of April, 2013, nor for the second cell phone taken from her on the 12th of April, 2013. RP 1033, He did not subpoena Parker's e-mail account to retrieve the messages. RP 995-997.

Heffernan stated that after he seized the cell phones he was in the process of obtaining warrants or had the warrants. RP 899. In fact there wasn't any warrants telephonic or otherwise issued to search the cell phones including the alleged warrant obtained on the 23rd of April, 2012, for Parker's cell phone. RP 1007.

See (App. B. attached to the Suppl. Brief, Kitsap County Clerk swearing to no warrants being filed with the Court). The only warrant received and filed in superior court was the warrant issued for Parker's arrest and a specific item i,e, firearm. (App. A.) Which is a violation of Article 1, section 7.

While awaiting trial, Parker had extensive conversations over the phone that the State claimed to be incriminating. RP 1249. During one conversation he had asked Prerost to tell the truth. App.

C. Pg. 239-243. in another he asked Holliday to retrieve (monster) a pistol from its original hiding place and put it in a bag and in the basement of the house. RP 531. APP. D. Parker had also contacted John Buckner, telling him to essentially tell the truth. RP 1250-1251.

However, during trial, not only was **counsel ineffective** for failing to suppress the photographs and e-mails taken without consent or search warrant from Parker and Holliday's cell phone's, he was also ineffective for failing to call critical witnesses such as Parker's mother and sister to rebut Johanna Holliday's testimony. See App. F. Witness List.).

Furthermore, it was **prosecutor misconduct** to allow its witnesses to go unchecked, where 1) the Detective had lied about getting search warrants for both of the cell phones, and 2) where Prerost lied about being with Parker on the streets in the years of 1999 and 2000. See App. E. DOC Records).

And it was **judicial error** to allow the highly prejudicial gang evidence where the court needed to conduct the 4 prong test provided in ER 404(b). RP 513-518

The following errors will be assigned to additional grounds for review and argument found in Section C.

B. ASSIGNMENTS OF ERROR.

1) Insufficient evidence deprived Parker of his right to a fair trial.

2) Ineffective Assistance of Counsel deprived Parker of his right to a fair trial.

3) Prosecutor Misconduct deprived Parker of his right to a fair trial.

4) Judicial Error deprived Parker of his right to a fair trial.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1) Did insufficient evidence deprive Parker of his 6th amendment right to a fair trial where the State failed to prove the essential elements of Burglary in the First Degree, Kidnapping in the First Degree, Promoting Prostitution in the First Degree, Human Trafficking in the First Degree, Assault in the Second Degree, Unlawful Possession of a Firearm in the First Degree, and Witness Tampering?

And; absent the evidence taken from the cell phones could the State therefore prove Promoting Prostitution and Human Trafficking?

2) Did Ineffective Assistance of Counsel deprive Parker of his 6th amendment right to a fair trial where counsel (1) failed to suppress the photographs and e-mails that were illegally obtained without consent or warrant, and (2) where counsel failed to call critical witnesses such as Parker's mother and sister to rebut the State's chief witness Holliday's testimony?

3) Did Prosecutor Misconduct deprive Parker of his right to a fair trial where the Prosecutor (1) failed to correct Detective Heffernan on actually obtaining the search warrants for the cell phones,

and (2) knowingly allow Prerost to lie about being with Parker in the years of 1999-2000, when in fact Parker was incarcerated from 1998-2001?

4) Did Judicial Error deprive Parker of his 6th amendment right to a fair trial where the Court allowed gang evidence to be admitted without first conducting the 4 prong test required in ER 404(b)?

C. ADDITIONAL GROUNDS FOR
REVIEW AND ARGUMENT.

**1. Insufficient Evidence Deprived Parker Of His Right To
A Fair Trial When The State Failed To Prove Every Essential Element
Of The Crime Charged!**

a) Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 u.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)(A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence; the accepted test is whether, after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt). Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In this case at bar, the Prosecutor did not prove Parker committed the crimes of First Degree Burglary, First Degree Kidnapping,

First Degree Promoting Prostitution, First Degree Human Trafficking, Second Degree Assault, Unlawful Possession of a Firearm in the First Degree, and Witness Tampering.

First; To convict Parker of First Degree Burglary, each of the following elements of the crime must be proved beyond a reasonable doubt;

1) That on or about January 1, 2013 through February 2, 2013 the defendant entered or remained unlawfully in a building;

2) That the entering or remaining was with intent to commit a crime against a person or property therein;

3) That in so entering or while in the building or in immediate flight from the building the defendant assaulted a person; and

4) That the acts occurred in the State of Washington.

See App. G. Instruction 34.

A person enters or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain. Instruction 32.

The first element cannot be proven, because the court heard evidence by Holliday that Prerost let Parker into the home to talk to her. "Jennifer had let him in and he came straight to -- he came looking for me right away." RP 494. "When you let somebody in your house and say, come on in, that's a license. It's a license to let them

in your house." RP 1241. Thus the burglary falls apart here like counsel argued in closing because the missing element is whether he had permission and evidence clearly shows that Parker had permission from his friends to be in the house.. Absent the missing element of number 1, no rational trier of fact could have found the essential elements beyond a reasonable doubt. State v. Green, 94 Wn.2d 216 controls.

Second; To convict Parker of First Degree Kidnapping, each of the following elements of the crime must be proved beyond a reasonable doubt;

- 1) That on or about January 1, 2013 through February 2, 2013, the defendant intentionally abducted Johanna Cathrine Holliday,
 - 2) That the defendant abducted that person with intent
 - a) to inflict bodily injury on the person, or
 - b) to inflict extreme mental distress on that person; and
 - 3) That any of these acts occurred in the State of Washington.
- See Appendix G. Instruction 47. also; Instruction 13.

"Abduct" means to restrain a person by...using or threatening to use deadly force." or secreting or holding him or her in a place where he or she is not likely to be found. RCW 9A.40.020

The first element cannot be proven because the court heard evidence by Holliday that he continued to tell me to get up and to get out of the house and whatever else he was threatening me or just

talking to me in a really rude way." RP 496. ... "And he kept on walking forward, so I kept on walking back, and eventually, I walked straight out of the house." RP 497. "He just told me to go straight to the car, to leave the house and go straight to the car." Id.

At some point they ended up going to Parker's friends house where they stayed for at least 10 minutes. RP 503. When asked by the Prosecutor "why did you leave the house?" Holliday answered "Because he needed to take me home?" RP 503.

Thus the kidnapping falls apart, because Holliday willingly walked out of the house on her own. RP 497, 1241. Furthermore, to satisfy the elements of abduction." A person must be restrained by using or threatening to use deadly force, or secreting where she could not be found.

a) Parker took her home.. RP 503.

b) Parker " would tell me to pack up my stuff and go. And I would beg him to not do that, to not make me leave... RP 536.

c) Tony "told me that he was going move his stuff to the Summit house, and I asked if I could come with." RP 620. At no time did Parker threaten to kill Holliday, or use any type of deadly force. while he may have beaten her with his hands nothing here suggest otherwise. Holliday further stated that she was angry with Parker for going back to his wife. RP 622.

The above testimony by Holliday clearly shows that Parker

could not have committed First Degree Kidnapping. Therefore, absent the missing element of number 1, and 2 no rational trier of fact could have found the essential elements beyond a reasonable doubt. In re Winship, 397 U.S 358, controls. See also; State v. Garcia, 179 Wn.2d 828, 318 P.3d 266 (2014)(evidence was insufficient to establish that defendant intended to cause extreme mental distress).

Third; To convict Parker of Second Degree Assault, each of the following elements of the crime must be proven beyond a reasonable doubt:

1) That on or about December 13, 2012 through January 20, 2013, the defendant assaulted Johanna Catherine Holliday;

2) That the assault was committed with intent to commit Unlawful Imprisonment; and

3) That this act occurred in the State of Washington.
See Appendix G. Instruction 29.

A person commits the crime of unlawful imprisonment when he or she knowingly restrains the movements of another person in a manner that substantially interferes with the other person's liberty if the restraint was without legal authority and was accomplished by physical force, intimidation, or deception. Instruction 28.

The second element cannot be proven, for the following; 1) the instruction implies that this act was a **continuing** offense for over 30 days, 2) the court heard evidence by Holliday that she could

have left Parker at anytime. At one point she begged Parker to let her stay when he wanted her to leave. See RP 536. **Asking someone to stay** in their presence does not satisfy the elements of unlawful imprisonment. Thus, the Second Degree Assault with intent to commit a felony; to wit Unlawful Imprisonment was not proven. [I]f the State had elected a specific date then the jury could discern how to apply the act. But when the State charged Parker on a continuing course of conduct throughout a lengthy time period then Holliday's testimony becomes critical when the jury had to decide that she was unlawfully restrained for 37 days. *Apprendi v. New Jersey*, 530 U.S. 466 controls.

Fourth; To convict Parker of Unlawful Possession of a Firearm in the First Degree, each of the following elements of the crime must be proven beyond a reasonable doubt:

1) That on or about April 12, 2013, the defendant knowingly owned a firearm or knowingly had a firearm in his possession or control;

2) That the defendant had previously been convicted of a serious offense; and

3) That the ownership, or possession or control of the firearm occurred in the State of Washington.

See Appendix G. Instruction 62.

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when

the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Instruction 59.

The first element cannot be proven because the court heard evidence by Holliday that Parker instructed her to move "Monster" from underneath the bed "and needs to go downstairs in the garage and to put it in a bag" RP531.

When asked if she did that? Holliday replied yes". RP 531.

Detective Heffernan testified "after conducting the interview I had applied for a telephonic search warrant for Mr. Parker's residence. RP 903. To arrest Mr. Parker and, secondly, to locate the handgun." Id.

"I saw the firearm where it was located inside the house." RP 990. There were no fingerprints located on the firearm." RP 989.

To prove constructive possession, the State must show dominion and control over an object and the ability to reduce [it] to actual possession. State v. Chouinard, 169 Wn.App. 895, 282 P.3d 117 (2012), however, mere proximity to the firearm is insufficient to show dominion and control, as basis for constructive possession, in a prosecution for unlawful possession of a firearm. Id.

The only evidence showing the last person to have exclusive control over the gun is Holliday. She moved it to a location in a

basement, and told the police where they could find it. See State v. Callahan, 77 Wn.2d 27, 459 P.2d 400 (1969)(Proof of possession of narcotics by defendant may not be established by circumstantial evidence when undisputed direct evidence places exclusive possession in some other person). Also; State v, Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986) In Knapstad amongst other things, the Prosecutor described the States evidence as follows; drug paraphernalia was found in common areas of the house, a gasoline credit card receipt issued to Douglas Knapstad several months prior to the search was found in a dresser drawer in one of the bedrooms...)

With no distinction between Knapstad, and Parker, the trial court held that "even considering all reasonable inferences [from this evidence] most favorable to the State...there is insufficient... evidence tending to prove that Doug Knapstad owned or had knowledge, control, or possession of the subject marijuana or that he was a resident" of the searched house. Id. at 349.

Like Callahan, and Knapstad, here the record shows that the States evidence is insufficient as a matter of law to prove that Parker actually or constructively possessed the firearm found inside a bag, in a basement that was known to be in the possession of someone else other than Parker. State v. Callahan, and Knapstad controls.

Moreover, it appears that the jury was erroneously instructed on on dominion and control. See Instruction 59. Third paragraph, "In

deciding whether the defendant had dominion and control over an item you are to consider all the relevant circumstances in the case... and whether the defendant had dominion and control over the premises where the item was located. In *Shumaker*, the defendant's conviction was overturned because the trial court erroneously instructed jurors that dominion and control over premises proved constructive possession of drugs found therein. *State v. Shumaker*, 142 Wn.App. 330, 334, 174 P.3d 1214 (2007), like *Shumaker*, this court should grant same treatment, and reverse the unlawful possession of a firearm conviction.

Fifth; To convict Parker of Tampering With A Witness, each of the following elements of the crime must be proven beyond a reasonable doubt:

1) That on or about June 29, 2013 and July 1, 2013, the defendant attempted to induce a person to testify falsely or withhold any testimony or absent himself or herself from any official proceeding or withhold from a law enforcement agent information which he or she had relevant to a criminal investigation; and

2) That the other person was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings or a person whom the defendant had reason to believe might have information relevant to a criminal investigation; and

3) That the acts occurred in the State of Washington.

See Appendix G. Instruction 65.

A person commits the crime of tampering with a witness when he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation to testify falsely or, without right or privilege to do so, to withhold any testimony, or to absent himself or herself from any official proceedings, or to withhold from a law enforcement agency information which he or she has relevant to a criminal investigation. Instruction 63.

The first element cannot be proven for the following; 1) the court heard testimony from Prerost, and heard the jailhouse phone calls where Parker, asked her to tell the truth. At no time during the calls did Parker ask Prerost to lie, or give false information, or to simply not show up for court.

On June 29, 2013, the call between Parker and Prerost, show Parker asking her to testify for him, and asked her to tell the truth . See App. C. Pg. 241.

On July 1, 2013, Parker again ask Prerost to be a witness for him because the State was trying to give him a lot of time. App. C. Pg. 243

The State played the recording for the jury, trying to prove witness tampering against Jennifer Prerost. The transcripts of the recording is part of the record and should be reviewed by this

court. RP 1246, 1249.

See State v. Rempel, 114 Wn.2d 77, 785 P.2d 1134 (1990)(
In that case evidence did not support conviction for witness tampering;
only contact between defendant and witness, who was complainant in
attempted rape case consisted of telephone calls to her from jail,
during which he did not ask her to change or withhold testimony but
simply apologized for his conduct and asked that she drop charges),

Earlier cases are factually distinguishable. In State v.
Stroh 91 Wash.2d 580, 588 P.2d 1182, 8 A.L.R. 4th 760 (1979), the
defendant asked the witness to not appear or alternatively change his
testimony. In State v. Wingard, 92 Wash. 219, 158 P. 725 (1916), the
defendant promised a reward, made a threat, and urged the witness to
ignore a subpoena.

Like Rempel, none of the above facts appear here in Parker's
case. The only contact between Parker and Prerost, consisted of tele-
phone calls to her from jail, during which he did not ask her to change
or withhold testimony but simply explained that she was there during
incident of the alleged burglary and kidnapping and to tell the truth.

Therefore, evidence did not support the conviction. State
v. Rempel, controls. Where reversal is required.

Finally!

To convict Parker of Promoting Prostitution in the First
Degree, and Human Trafficking in the First Degree, each of the following

elements of the crime(s) must be proven beyond a reasonable doubt:

1) That on or about November 1, 2012 through April 12, 2013, the defendant knowingly advanced prostitution by compelling Johanna Catherine Holliday by threat or force to engage in prostitution; and

2) That the defendant recruited, harbored, or transported by any means another person, knowing that force, fraud, or coercion will be used to cause the other person to engage in a commercial sex act and the acts involves committing or attempting to commit kidnapping. and;

3) That the acts occurred in the State of Washington.

See Appendix G. Instruction 23, and Instruction 10.

The first element cannot be proven because the court heard evidence from Holliday that, she was the one who suggested that she try prostitution. RP 457. And at no time did Parker force her to engage in prostitution. Holliday sold her body for sex because it was her only way of getting money. RP 457. She testified that she could have left the situation at any time but chose to stay and provide income for herself and Parker. RP 510. While the assaults allegedly occurred out of jealousy for Holliday being around Flewellen, there was no testimony from Holliday stating that Parker threatened or forced her into prostitution.

The second element cannot be proven because the element of kidnapping do not exist. Parker has shown above that there was insuffi-

cient evidence to establish first degree kidnapping absent the element of abduction.

There was insufficient evidence to support the use of kidnapping as an element of Human Trafficking, because the Prosecutor failed to prove abduction. Abduction may be proved in three distinct ways, each of which necessarily involves restraint, by threatening deadly force, by using deadly force or by secreting or hiding he/she in a place where she Johanna Holliday is not likely to be found. See State v. Green, 94 Wn.2d 216, at 224-230, 616 P.2d 628 (1980), here, there is no evidence of a threat of deadly force, or use of deadly force, the place where Holliday was taken to was where she was living with Parker, so there is no evidence of Parker hiding her out where she could not be found. Id.

The assault itself could not constitute the restraint necessary to prove kidnapping in the first degree as shown above and where there is insufficient evidence to establish Human Trafficking the conviction must be reversed. State v. Green, controls.

However before this court can come to the conclusion of whether sufficient evidence exist to sustain the convictions of promoting prostitution and human trafficking, this court must first consider whether the evidence obtained to support the convictions was obtained in violation of Article 1, section 7.

Illegal Search And Seizure

NO PERSON SHALL BE DISTURBED IN HIS PRIVATE AFFAIRS, OR
HIS HOME INVADED, WITHOUT AUTHORITY OF LAW. WA. CONST. ARTICLE 1
§ 7.

Under the privacy section of the Washington Constitution a search occurs when the government disturbs those privacy interests that citizens of the State have held, and should be entitled to hold safe from governmental trespass absent a warrant. *State v. Hinton*, 179 Wn.2d 862, 319 P.3d 9 (2014).

Here, at the start of this case when Holliday was pulled over during a traffic stop after being observed purchasing drugs, the officer's took the drugs she bought and confiscated her cell phone. RP 532. On April 4, 2013, Holliday was detained and let go with a promise to meet with the Detectives later. *Id.*² RP 812-814, 890, 1012.

Detective Heffernan told Holliday that he was taking the phone into custody either "pending a consent search or a search warrant". At that time the police had no legal authority to seize Holliday's cell phone without a warrant prior to the seize. *State v. Hinton*. 179 Wn.2d 862.

Approximately a week later, during a sting to trap Holliday, on April 12, 2013, Holliday was arrested for solicitation of prostitution at the Oyster Bay Inn Motel. RP 541-543, 814-818, 819-821. The police seized Holliday's second cell phone again without a warrant, and no consent to search the phone. RP 1032, 1033.

When asked why he took the phone? The Detective replied

"Because we thought it would have evidence of criminal activity on it." RP 1032.

The police may seize an individual's phone pursuant to a lawful search incident to arrest to prevent the destruction of evidence. *State v. Valdez*, 167 Wn.2d 761, 776, 224 P.3d 751 (2009), but may search the phone (including text messages) only with a warrant, a valid exception to the warrant requirement, or the phone owner's express consent. *Id.*

Here, the record shows that the police did not obtain a warrant to search Holliday's cell phone on April 4, 2013, and for the one taken on the 12th of April, 2013. See App. B. Public Disclosure confirming this claim.

However, a substantial amount of evidence such as e-mails, photographs, and phone numbers were taken off of Holliday's phone and used to show the jury that she was prostituting and her ties with Parker. RP 886, 889, 894, 897, 899, 532-534, 544.

On April 12, 2013, pursuant to a statement given by Holliday to the police, Detective Heffernan obtained a search warrant for Parker's residence. RP 903. The warrant covered the search of the home for a firearm known to be in the basement, and the body of Anthony Parker. *Id.* Parker was arrested without incident. The police also seized Parker's cell phone. RP 904. Thus violating the scope of the warrant. *State v. Thein* 138 Wn.2d 133, 977 P.2d 582 (1999).

Detective Heffernan stated that he did obtain a search

warrant for Parker's phone on the 23rd of April. RP 1007. Evidence taken from the phone consisted of backpage ad, postings of Holliday soliciting money for sex. RP 993, 1007. This was shown to the jury to concrete the convictions of promoting prostitution and human trafficking. RP 1257. However, there is no record of any warrant(s) being issued on April 23rd, 2013, or on any other date pertaining to the cell phones.

Constitutional protections are strongest in the home. U.S. Const. amend. IV; Wash. Const. art I § 7; Payton v. New York, 445, U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)("the Fourth Amendment has drawn a firm line at the entrance to the house"): State v. Young, 123 Wash.2d 173, 185, 867 P.2d 593 (1994)("the home receives heightened constitutional protections"). Warrantless searches of the home are unreasonable under both the Federal and State Constitutions unless pursuant to a recognized exception. State v. Garvin, 166 Wash. 2d 242, 249, 207 P.3d 1266 (2009), exceptions to the warrant requirement are carefully drawn and jealously guarded. Id. Plain view is one of these exceptions. Id. "A plain view search occurs when law enforcement officers "(1) have a valid justification to be in an otherwise protected area and (2) are immediately able to realize the evidence they see is associated with criminal activity." State v. Hatchie, 166 P.3d 698 (2007), The question here is 1) whether the police had legal standing to seize the cell phone when there was no evidence at that

time that the cell phone was involved in any illegal activity? 2) whether the scope of the warrant covered the cell phone? and 3) whether the evidence seized absent the warrant from the cell phones require dismissal of the entire case with prejudice due to fruits of the poisonous tree doctrine? State v. Hinton, supra.

Probable cause to search requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched. State v. Johnson, 104 Wn.App 489, 17 P.3d 3, (Div. 2 2011).

Like Johnson, police officers seizure of cellphone found during the search of Parker's residence was not justified by plain view doctrine; When the officers seen the cell phone nothing about that cell phones exterior gave probable cause to believe that evidence of a crime was being committed, and to acquire probable cause, police needed to view contents and doing so was an additional, unauthorized search.

Court's require that a nexus between the items to be seized and the place to be searched must be established by specific facts; State v; Thein, 138 wn.2d 133, 977 P.2d 582 (1999)(citing United States v. Schiltz 14 F.3d 1093, 1097 (6th Cir. 1994)(while officers training and experience may be considered in determining probable cause, it cannot substitute for the lack of an evidentiary nexus).

In contrast to Campbell, where the court reviewed the

individual's expectation to privacy is violated absent consent to the search or valid warrant. *State v. Hinton*, 179 Wn.2d 862, supra. (Under the Fourth Amendment, Const. art. 1. § 7.)

Second; Prejudice attached the moment the contents of the cell phones were exposed, absent the warrant or consent. RP 991, 993, 994-997, 1000-1001, 1004-1006, 1010-1011.

Third; The prejudice continued where counsel failed to object or move to suppress the information that was taken to support the Prosecution's case-in-chief, when the Detective testified that he did not get consent to search Holliday's cell phone.

Defense counsel was in possession of all discovery, a red flag should have been raised when the Detective claimed he obtained warrants to search the phones. Failing to investigate whether or not the evidence admitted at trial was tainted clearly shows counsel performance fell below the standard set forth in *Strickland*.

[I]f counsel would have moved to suppress, it is almost certain that the trial court would not have let the evidence in absent a showing of a valid search incident to arrest, consent, or warrant. See App. B. Kitsap County Clerk (No warrants issued for cell phones).

Absent the tainted evidence the State could not prove beyond a reasonable doubt that Parker committed the crimes of promoting prostitution in the first degree and human trafficking in the first degree. *Jackson v. Virginia*, supra. Where circumstantial

evidence is at issue, without the photographs or e-mails the State had no case to try. And no lawyer worth his weight would have failed to move for a, 3.6 hearing to suppress. Strickland, controls.

Further, in light of certain facts surrounding the lawyer and client relationship, where conflict of interest is at issue on direct appeal,⁴ this court could conclude that there was a break down in communication to justify counsel's lack of zeal to defend Parker according to our Federal and State Constitutions. See *In re Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001)(citing *Sanders v. Ratell*, 21 F.3d 1446, 1456 (9th Cir. 1994)).⁵

Thus, ineffective assistance of counsel deprived Parker of his right to a fair trial. Reversal is required. See *U.S. v. Wurie*, 728 F.3d 1 (2013)(Search-Incident-To-Arrest exception does not authorize the warrantless search of data on a cell phone seized from an arrestee's person, such a search is not necessary to protect arresting officers or preserve destructable evidence. U.S.C.A. Const. Amend. 4).

3. Prosecutor Misconduct Deprived Parker Of His Right To A Fair Trial When He Elicited False Testimony From Witnesses.

It is established that a conviction obtained through use of false testimony, known to be such by representatives of the State, must fall under the Fourteenth Amendment, *Mooney v. Holohan*, 294 U.S. 103; *Pyle v. Kansas*, 317 U.S. 213; *Curran v. Delaware*, 259 F.2d 707.

Here, during direct examination the Detective stated that he

telephonic warrant authorizing the search, noted it described the place to be searched as "the vehicle" without express limitations. 166 Wn.App. 464, 272 P.3d 859 (2011) here the limitations were put on the scope of the search.

Although we cannot be sure if the evidence obtained off the cell phones persuaded the jury to convict Parker, this court cannot make that determination for the jury. The entire case should be dismissed. State v. Green, 177 Wn.App. 332, 312 P.3d 669 (2013) Exclusionary rule prohibits the admission of evidence that is the product of the unlawfully acquired evidence up to the point at which the connection with the unlawful search becomes so attenuated as to dissipate the taint.

Under our state constitution, officers of the law must have actual authority of the law to intrude into the private affairs, even the affairs of bad men. State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009) In this case, the Bremerton police did not have a scintilla of authority to search both cell phones of Holliday and the cell phone of Parker, without a valid search warrant or consent from both parties.

While the sender of the text message assumes a limited risk that the recipient may voluntarily expose that message to a third party, the sender does not assume the risk that the police will search the phone in a manner that violates the phone owner's rights. State

v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014).

To determine whether governmental conduct intruded on Parker's private affair's as well as Holliday's, Parker invites this Court to look at the "nature and extent of the information which was obtained as a result of the government conduct." State v. Miles, 160 Wash.2d at 244, 156 P.3d 864 (citing State v. McKinney, 148 Wash.2d 20, 29, 60 P.3d 46 (2002) and conclude that absent the information taken from the cell phones to prove promoting prostitution in the first degree, and human trafficking in the first degree, the convictions need to be reversed with prejudice. State v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014) controls. See also; State v. Ruem, 179 Wn.2d 195, 313 P.3d 1156 (2013)(Deputy's observation of starter marijuana plants outside defendant's residence during examination of perimeter did not provide independent source of probable cause sufficient to uphold issuance of search warrant); State v. Monaghan, 165 Wn.App. 782, 266 P.3d 222 (Div 1 2012)(Search of locked container within the trunk of defendant's car exceeded the scope of consent he gave police); State v. Gebaroff, 87 Wn.App. 11, 939 P.2d 706 (Div 2. 1997)(Affidavit did not provide probable cause to search travel trailer under control of another person that was located on same property as mobile home); Application for Writ of Habeas Corpus of Charles McNear Jr. 65 Wn.2d 530, 398 P.2d 732 (1965) (Search warrant was unreasonable and in violation of his constitutional rights, and evidence procured thereby should have been excluded at

defendant's subsequent trial, on narcotics charges) and State v. Dennis, 16 Wn.App. 417, 558 P.2d 297 (Div 2. 1976). Thus, insufficient evidence deprived Parker of his due process rights to a fair trial.

2. Ineffective Assistance Of Counsel Deprived Parker Of His Right To A Fair Trial When Counsel Failed To Suppress The Photographs And E-mails That Were Illegally Obtained, And Failed To Call Critical Witnesses.

Both the Sixth Amendment to the United States Constitution and article 1 § 22 (amendment 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings.

A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal. State v. Nicols, 161 Wn.2d 1, 9 162 P.3d 1122 (2007). A claim of ineffective assistance of counsel presents a mixed question of fact and law reviewed de novo." State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To establish ineffective assistance of counsel, the defendant must establish that his attorney's performance was deficient and the deficiency prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Deficient performance is performance falling "below an objective standard of reasonableness based on consideration of all circumstances." State

v. McFarland, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995). The prejudice prong requires the defendant must show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment.

Second, the defendant must show that the deficient performance prejudiced the defense. This also requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Strickland, 466 U.S. at 687.

While there is a strong presumption that counsel's performance was reliable. State v. Studd, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999); State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). The question here, in deciding whether Parker was denied reliable, effective representation is whether counsel acted accordingly when he failed to suppress the contents of Holliday's first and second cell phone, as well as Parker's cell phone taken during the search.³

For a defendant to demonstrate his or her reasonable expectation of privacy in an item searched, as a prerequisite to claiming that the search was unconstitutional the defendant must show that (1) he or she had an actual, subjective expectation of privacy, by seeking to preserve something as private and (2) society recognizes that expectation as reasonable. State v. Hamilton, 179 Wn.App. 870, 320 P.3d 142 (Div. 2 2014)

First; Our Supreme Court settled on the premise that an

obtained a search warrant for Parker's cell phone on the 23rd of April, 2013, and search warrants for Holliday's cell phones taken on the 4th and 12th of April, 2013. RP 1007, 1032, 1033.

The State knew this to be not true, because there wasn't any warrants issued for the cell phones. The Prosecutor had all material evidence in his possession, and knew that if no warrants existed his case would crumble. See App. B.

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.

Napue v. Illinois, 360 U.S. 264 (1959)

If Officers use false evidence, including false testimony, to secure a conviction, the defendant's due process rights are violated. Wilson v. Lawrence County, 260 F.3d 946 (8th Cir); See Phillips v. Woodford, 267 F.3d 966 (9th Cir).

Further, the prosecutor's knowing use of perjured testimony also violates the due process clause. Schaff v. Snyder, 190 Fed. 513 (7th Cir.)

State's witness Jennifer Prerost testified that she have known Parker since 1997 or 98. RP 700 And Parker was her Pimp on the street between 1999 and 2000. RP 706.

However, Parker was incarcerated in the Department of Corrections from the year of 1998 to 2001. See App. E.

Also to substantiate the lie Prerost told, in the jail call interview that the state published to the jury, it shows Lorena Llamas Jennifer Prerost and Parker in a conversation. See the brief text on Pg. 1, 3-1-13: App. C.

Q; Jennifer says hi tony.

A: Who's that?

Q: Jennifer that was there. You don't remember? Jaccet's...

A: No.

Q: ..Jennifer. The blue eyes. Jennifer.

A: What is she doing in jail?

Q: She's right here next to me.

A: Let me talk to her.

A: Jennifer who? What's her last name?

.....

If Parker had knew Prerost he would have acknowledged that fact. But there was no recognition.

The State knew Parker was in custody during the time Prerost claimed to be in a relationship with Parker, because the State had

access to Parker's criminal record.

Napue, held; "it is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth... Napue v. Illinois 360 U.S. at 269-270.

Prosecutor has constitutional duty to correct evidence he knows is false. Hays v. Woodford, 361 F.3d 1054 (9th Cir); U.S. v. Johnson, 968 F.2d 768 (8th Cir)(Just one "single misstep" on the part of the government or prosecutor, may be so destructive to a defendant's right to a fair trial that dismissal is required).

In this case, the perjured testimony of both Detective Heffernan and Prerost contributed to Parker being convicted. Thus reversal is required.

4. Judicial Error Deprived Parker Of His Right To A Fair Trial When The Court Admitted Highly Prejudicial Gang Evidence.

Both the United States Constitution and the Washington State Constitution article I, section 22, guarantee the criminal defendant a fair by an impartial jury. State v. Latham, 100 Wn.2d 59, 62-63, 667 P.2d 56 (1983).

"A trial in which irrelevant and inflammatory matter is introduced, which has a natural tendency to prejudice the jury against

the accused, is not a fair trial." State v. Miles, 73 Wn.2d 67, 70, 436 P.2d 198 (1968). Where a defendant is denied the right to a fair trial, the proper remedy is reversal of the conviction and remand for a new trial. State v. McDonald, 96 Wn.App. 311, 979 P.2d 857 (1999), affirmed 143 Wn.2d 506, 22 P.3d 791 (2001).

At trial, counsel objected to the prosecutor asking Holliday whether or not Parker ever talked about being affiliated with a gang. RP 513, Citing State v. Scott, counsel argued that before trial court can admit gang evidence, it must find a nexus between the gang evidence and the charged crimes. RP 515. The court admitted the evidence for its impact on the victim, the knowledge of it, to force her to comply with his demands and threats. RP 518, 522.

Based on the above, the trial court erred in admitting gang evidence without first conducting the requisite on-the-record analysis under ER 404(b).

Before admitting ER 404(b) evidence, a trial court "must" (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect.

State v. Foxhoven, 161 Wn.2d 168, 175, 163 P.3d 786 (2007).

While the record does show that the court had the discussion about the gang evidence, satisfying the first three prongs of ER 404(b)

the record does not support any showing that the court weighed the probative value against the prejudicial effect. Thus failing the four prong test of ER 404(b).

It was undisputed that Parker and Holliday was in some kind of relationship. And the central issue in Parker's trial was the credibility of the State's witnesses such as Holliday, Prerost and Detective Heffernan.

The jury had the duty to consider all of the evidence at trial and determine which testimony was credible and what facts were established by the State's evidence. *State v. Walton*, 64 Wn.App. 410, 415-416, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992) ("It is the trier of fact who resolves conflicting testimony, evaluates the credibility of witnesses and generally weighs the persuasiveness of the evidence.").

The only question before the jury was whether or not the State had proved beyond a reasonable doubt that Parker committed the crimes charged. *State v. Green*, supra. Thus under the facts of this case, as Parker have shown above, any evidence which would bias the jury against Parker was more prejudicial than usual. *State v. Foxhoven*, 161 Wn.2d 168, controls. Simply put, absent the court meeting all of the prongs required in ER 404(b) it was error for the court to allow the jury to here that Parker was affiliated with a gang. Because the erroneous gang evidence could have tributed to the jury finding guilt reversal is

required. State v. Mee, ---Wn.App.---,---P.3d---, WL 1604808, *5 (2012), citing State v. Kilgore, 147 Wn.2d 288, 294-295, 53 P.3d 974 (2002).

D. CONCLUSION AND PRAYER FOR RELIEF.

Based on the above, should this Court conclude that insufficient evidence deprived Parker of his right to a fair trial then reversal is mandated with prejudice.

In the alternative, should this Court conclude that errors of constitutional magnitude attaches to ineffective assistance of counsel, prosecutor misconduct, or judicial error as claimed herein, then reversal with new trial is mandated.

Respectfully Submitted,

Lony D. Parker
12-2-14

APP. F.

G

APPENDIX F. PRP

COA.# 45811-0-II
NO. 13-1-00597-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE PERSONAL RESTRAINT PETITION OF:

ANTHONY D. PARKER
PETITIONER.

PERSONAL RESTRAINT PETITION

ON APPEAL FROM THE KITSAP COUNTY SUPERIOR COURT
THE HONORABLE SALLY OLSEN

PETITIONER'S OPENING BRIEF

MOTION TO SUPPRESS
EVIDENCE IS ATTACHED
AS APPENDIX J.

Anthony D. Parker
#776122
Clallam Bay Corr. Cntr
1830 Eagle Crest Way
Clallam Bay, WA 98326

A. STATUS OF PETITIONER.

Anthony D. Parker challenges his 2013 Kitsap County convictions for Human Trafficking in the First Degree, Promoting Prostitution in the First Degree, Burglary in the First Degree, and 5 counts of Assault in the Second Degree, and Fourth Degree.

Parker is currently in custody as a result of these convictions, and is serving approximately fifty years. In addition, Parker has lost his right to vote and to possess a firearm as a result of the convictions. RAP 16.4(b)(c),(d). See Judgment and Sentence properly attached as App. A.

B. RELEVANT FACTS.

On April 4, 2013, the Bremerton Police, was conducting a surveillance operation on a local gang member known to be selling illegal drugs. Bremerton Police observed Johanna Catherine Holliday, age 23, of Bainbridge Island, get into the car of the gang member, take a short ride, and soon return to a fellow prostitute's car.¹

Officer's then pulled the car over with the two women inside and found a pill of Oxycodone that Holliday admitted to purchasing. She said that she intended to smoke the pill. Officer's took the drug, and Holliday's cell phone,² and released Holliday at the scene because she agreed to meet with the detectives the following day to make a statement about her criminal activities. Holliday,

1. See news report App. C.

1.

2. See RP- Officers testimony.

however, failed to meet with the officer's the next day.

When the detectives obtained Holliday's cell phone, they had conducted a search where that search of the cell phone contents revealed Holliday to be a prostitute. The detectives obtained, information that Holliday was posting ads on backpage.com to gain clientel, they also obtained information about Parker, and several other people that were a part of an on going investigations of local gang members in the Bremerton area.³

Because of Holliday's drug addiction, and her ability to prostitute her body to obtain the drugs, the detectives knew that the only way to get Holliday to meet with them would be to devise a sceme by answering her ads for sex on backpage.com.

On April 12, 2013, Holliday was arrested when detectives with the Bremerton Police Department responded to Holliday's advertisement for prostitution services on backpage.com.

The charging document for Holliday stated that the Bremerton Police's Special Operations Group (SOG) was already investigating Holliday at the time she was stopped after the drug deal, detectives were investigating her for prostitution and involvement with drugs.

Holliday was booked into the Kitsap County Jail on April 13, 2013, for possession of narcotics and an outstanding DUI warrant. At no time was Holliday charged for prostitution.

3. No warrant was obtained
for the contents of the
cell phone.

2.

According to the Statement of Probable Cause, after Holliday was placed into custody for possession of a schedule II drug, Percocet, and an outstanding warrant, Holliday agreed to give a taped statement, detailing her relationship with Llamas, and Parker, whom detectives identified through the contents of Holliday's cell phone. Holliday confirmed that Parker acted as her pimp, and boyfriend since the time he bailed her out of jail approximately four months prior to her arrest,⁴ in or around December 2012.

Holliday claimed that Parker had beat her and forced her into prostitution on many occasions but could only attest to an actual date of these incidences to be April 12, 2013, the date she was arrested. According to the Bremerton Police, it was because of the statement given by Holliday, did they seek a warrant for Parker's arrest. On April 13, 2013, at approximately 1200 hours, detectives executed a search warrant signed by Judge Jennifer Forbes, where Parker was taken into custody. (It appears that this is the only warrant issued). See Probable Cause attached as App. B.

The State originally charged Parker with 1 count of Promoting Prostitution and Unlawful Possession of a Firearm. However, due to breakdown in communication's with lawyer the State amended the information , charging Parker with 1 count of Human Trafficking in the First Degree, 1 count of Promoting Prostitution in the First

3.

4. According to booking info, Holliday was in jail from 11-6-12-6, 2012

PERSONAL RESTRAINT PETITION

Degree, 1 count of Burglary in the First Degree, 1 count of Kidnapping in the First Degree, 4 counts of Assault in the Second Degree, 1 count of Assault in the Fourth Degree, 1 count of Unlawful Possession of a Firearm in the First Degree, and 1 count of Tampering with a Witness, which amongst other things was clearly an act of Vindictive Prosecution. See original Information and the Amended Information attached as App. D.

However the Charging Document states that the crimes of Promoting Prostitution and Human Trafficking occurred on or about 11-1-2012 and 4-12-2013, and the crimes of Assault and Kidnapping occurred on or about 1-1-2013 and 2-2-2013. The dates of the alleged crimes are inaccurate for the following reasons:

1) Although the Probable Cause alludes to certain crimes being committed over a period of time, the only date the detectives attributed to the crimes was 4-12-2013 and

2) Holliday was in custody 11-6-2012 to 12-6-2012, which made it highly improbable for Parker to be engaged in the crimes of Promoting Prostitution and Human Trafficking on Holliday when in fact she did not meet Parker until after she was released from jail on the 6th of December, 2012, like the probable cause stated. See Booking Document attached as App. E.

Furthermore, Holliday could not specify which date or day

the Assaults or Kidnapping supposedly occurred, which posed a problem for the defense. Because of the inaccuracies found in the charging document, the jury was led to believe that these crimes were committed from November 6, 2012 through April 12, 2013, and January 1, 2013 through February 2, 2013. See Question From Deliberating Jury attached as App. F, where the jury asked the court should it determine guilt on 1-1-13 and 2-2-13 or 1-1-13 through 2-2-13.

Because the State failed to correct the error of the dates, Parker was not able to defend against the charges and information, which therefore allowed the jury to be improperly instructed on the elements of the crimes charged.

Prior to trial Parker, had complained of his Counsel not taking the time to visit with him, to discuss the case at length. He also complained of Counsel not calling any witnesses or conducting a meaningful investigation. See Report of the Court Pg.2 1:39pm attached as App. G. Also Affidavit's from witnesses.

Based on Parker's counsel being ineffective, his incompetency allowed the State to try Parker on a defective charging document, with evidence obtained without a search warrant, which in turn deprived Parker of his inherent right to a fair trial, as he will show below.

C. RELEVANT ARGUMENT.

1. Introduction

5.

PERSONAL RESTRAINT PETITION

Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence; the accepted test is whether, after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt) Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

Here, Parker's rights to a fair trial were violated when the State failed to prove he committed the crimes of Promoting Prostitution in the First Degree, Human Trafficking in the First Degree, Assault's in the Second and Fourth Degree, and Kidnapping in the First Degree, that were alleged in a defective charging document.

2. Charging Document

When evaluating the sufficiency of a charging document, where all of the essential elements are contained in the charging document the court of appeals asks whether the defendant has shown that he was nonetheless prejudiced by any vague or inartful

language in the charge. State v. Phuong, 174 Wn.App 494, 299 P.3d 37 (2013). In this case at bar, an essential element such as the correct date was not included in the information. Therefore the charging document was inadequate where it did not allow Parker to prepare a proper defense. See State v. Brewczynski, 173 Wn.App. 541, 294 P.3d 825 (2013).

Even though defense counsel failed to challenge the **inaccuracy** of the charging document prior to trial the Supreme Court held that defendant's may challenge a defective charging document for the first time on appeal; but where they have failed to raise such a challenge at trial the court construe the document liberally in favor of validity. State v. Kjorsvik, 117 Wn.2d 93, 102, 812 P.2d 86 (1991).

However, a charging document is constitutionally defective under the Sixth Amendment to the United States Constitution and article I section 22 of the Washington State Constitution if it fails to include "all essential elements of a crime." The rationale underlying this rule is that a defendant must be apprised of the charges against him or her and allowed to prepare a defense. "An essential element is one whose specification is necessary to establish the very illegality of the behavior charged." State v. Johnson, 289 P.3d 662 (2012).

Here, the Prosecutor alleged that Parker committed the crimes of Promoting Prostitution and Human Trafficking on two specific dates 1) 11-1-2012, and 2) 4-12-2013. We know the dates are inaccurate because the victim in this case was incarcerated in jail from 11-6-2012 to 12-6-2012. Further, Holliday admitted that she did not know Parker prior to her short 30 day incarceration and met him after she was released.

[I]f this Court was to believe that a mistake was made in the charging document, where the document should have matched the dates on the to convict instructions where it states that on or about November 1, 2012 through April 12, 2013 then this Court is to conclude that the jury was improperly instructed on element number 1 in the to convict instruction on Human Trafficking and Promoting Prostitution in the First Degree. With an inaccurate date of the charged offense no rational trier of fact could have found the essential elements beyond a reasonable doubt. Id. In re Winship, supra.

When words in a charging document are read as a whole, construed according to common sense and include facts which are necessarily implied. State v. Taylor, 140 Wn.2d 229, 243, 996 P.2d 571 (2000) If the necessary elements are neither found nor fairly implied in the charging document the Court presumes prejudice and

reverse without reaching the question of prejudice. State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). Thus, adequate notice of the specific crime charged is an absolute requirement of the law. U.S. Const. amend. VI: Wash. Const. art. 1 § 22. See State v. Vangerpen, 125 Wn.2d 782, 888 P.2d 1177 (1995) (The remedy for information failure to include essential elements is reversal and dismissal without prejudice). In this case this Court is required to reverse the Promoting Prostitution in the First Degree, and Human Trafficking convictions because the State cannot prove Parker committed these crimes on the dates it alleges in the charging document.

[I]f the State was to argue that the inaccuracies in the dates are or should be considered harmless error, that argument fails for the following reason;

In State v. Stribling, 164, Wn. App. 867, the State charged Stribling, in an amended information with one count of sexual exploitation of a minor, one count of attempted possession of depictions of a minor engaged in sexually explicit conduct, and seven counts of felony communication with a minor for immoral purposes. In the amended information, all of the felony communication with a minor for immoral purposes counts III through IX contained two separate "on or about" dates for when the alleged criminal acts

took place. Counts III, VIII, and IX two "on or about" dates matched but the two separately included dates in counts IV through VII did not match. Id.

In the Stribling, case the State noticed the non-matching dates and requested the trial court 1) ignore the inaccuracies as proof reading mistakes or 2) conform the amended information to the proof which was the first date in every count. Id.

However, the State in Parker's case made no such request even where they knew the victim was in jail during part of the time the crimes they had alleged occurred.

Under the fourth amendment, factual inaccuracies or omissions in a warrant affidavit may invalidate the warrant if the defendant establishes that they are (a) material and (b) made in reckless disregard for the truth; a showing of mere negligence or inadvertence is sufficient. State v. Chenoweth, 160 Wn.2d 454, 158 P.3d 595 (2007)(quoting Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (U.S.Del 1978); See also State v. Franks, 105 Wn.App. 950, 22 P.3d 269 (2001)(inaccuracies in charging instrument).

Moreover, where the State relied on specific dates when it charged Parker for the crimes, there was no specificity in the to convict instructions" where the State no longer relied on the specific dates but broadened the dates by inserting the word through

in the "to convict instructions to allow the jury to basically pick a day they believe the crimes had occurred. See Jury Instructions attached as App. H. Thus, relieving its burden of proving each and every element of the crimes charged beyond a reasonable doubt. See Maddox v. City of L.A., 792 F.2d 1408, 1412 (9th Cir. 1986). While an erroneous instruction is not otherwise reversible unless the court is left with a substantial and ineradicable doubt as to whether the jury was properly guided in its deliberations." Binks Mfg. Co. v. Nat'l Presto Indus., Inc, 709 F.2d 1109, 1117 (7th Cir. 1983)(quoting Miller v. Universal City Studios. Inc, 650 F.2d 1365, 1372 (5th Cir. 1981) "The question on appeal is not whether an instruction was faultless in every respect, but whether the jury, considering the instruction as a whole, was misled."

Here, it is clear that the jury was misled into believing that the crimes of Promoting Prostitution in the First Degree, as well as Human Trafficking were both committed from 11-1-2012 through 4-12-2013, when surely from November 6 through December 6, 2012 the victim Johanna Holliday was not only in jail but did not know Parker until after she was released.

The principle standard for the charging decision is the prosecutions ability to prove all elements of the charge. State v. Campbell, 103 Wash.2d 1, 26, 691 P.2d 929 (1984)

The requirement of ability to prove the crime is also set forth in Standard 3-3.9 of the American Bar Association Standards on the Prosecution Function.

It is unprofessional conduct for a prosecutor to institute or cause to be instituted, or to permit the continued pendency of criminal charges when it is known that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction. Id. State v. Knapstad, 107 Wn.2d 346, 729 P.2d 51 (1986).

Here, the charges were not supported by the probable cause and the "to convict instructions were not supported by the charging document. The primary evidence that the State relied on was the evidence taken from Holliday's cell phone, which was taken in violation of Parker's Fourth Amendment right to the U.S. constitution and Holliday's testimony where she could not remember any day, date, or time the crimes actually took place. See argument below.

3. Illegal Search And Seizure

NO PERSON SHALL BE DISTURBED IN HIS PRIVATE AFFAIRS, OR HIS HOME INVADED, WITHOUT AUTHORITY OF LAW. Wash. Const. art. 1 § 7.

Under the privacy section of the Washington Constitution

a search occurs when the government disturbs those privacy interests that citizens of the State have held, and should be entitled to hold, safe from governmental trespass absent a warrant. State v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014).

To determine whether governmental conduct intrudes on a private affair, Parker invites this Court to look at the "nature and extent of the information which was obtained as a result of the government conduct." See State v. Miles, 160 Wash.2d at 244, 156 P.3d 864 (citing State v. McKinney, 148 Wash.2d 20, 29, 60 P.3d 46 (2002)).

Here, when Holliday was stopped and searched by the police whom had observed her making a drug buy with a known gang member, the police confiscated her cell phone along with the drug she bought. Because she was not arrested at the scene, there was no reason for the confiscation of her cell phone.

However, it is gleaned that the police had intentions on going through her cell phone to maybe see if they could learn who her drug contacts were. From the time the cell phone was in the police's possession to the actual date of Holliday's arrest on 4-12-2013, there is no evidence of a court order or search warrant either telephonically or otherwise which authorized the police to obtain Holliday's private information.⁵

13.

5. Officer testified about a warrant but was not offered into evidence

Furthermore, even [i]f we were to assume that a warrant was obtained, Parker's privacy was violated as soon as the police searched the cell phone to gain access to Holliday's contacts. It wasn't until the police obtained the information about Holliday posting ads on the backpage.com for solicitation of services did the police learn of Parker and his interest's in Holliday.

The police read the text messages between Parker and Holliday, that maybe suggested Parker was acting as her pimp. However, the only way to confirm their suspicion was to contact Holliday by posing as a customer who was answering her ad on backpage.com. See App. C. Once in custody Holliday confirmed Parker as her pimp, and warrants were then issued. See App. B.

While the sender of a text message assumes a limited risk that the recipient may voluntarily expose that message to a third party, the sender does not assume the risk that the police will search the phone in a manner that violates the phone owner's rights. State v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014).

Here, Holliday did not volunteer her cell phone to the police when she was detained for buying drugs. The phone was illegally confiscated and searched without her consent. It wasn't until after Holliday was placed into custody and interrogated about her relations with Parker did she volunteer and confirm the information obtained

from the cell phone which was admitted into evidence. See Trial Court's Exhibit List attached as App. I.

The police may seize an individual's phone pursuant to a lawful search incident to arrest to prevent the destruction of evidence, State v. Valdez, 167 Wash.2d 761, 776, 224 P.3d 751 (2009), but may search the phone (including text messages) only with a warrant, a valid exception to the warrant requirement, or the phone owner's express consent.

The problem we have here is, 1) the State cannot claim that phone was seized due to Holliday's arrest, when Holliday was never arrested on April 4, 2013, for being in possession of drugs, so the search incident to arrest does not apply here, and 2) because there is no evidence that Holliday consented to the search, Parker should have standing to challenge it now.

Moreover, since the phone was searched without a warrant, an exception, or consent, any evidence derived from the search, pertaining to Parker and the convictions for Promoting Prostitution, and Human Trafficking, or any and all other convictions related to the cell phone is fruit of the poisonous tree, and the convictions must be overturned. State v. Hinton, 179 Wn.2d 862, controls.

4. Suppression Of Evidence

Although defense counsel was ineffective for failing to

suppress the evidence taken from Holliday's cell phone. Parker believes he has the right to suppress that evidence Post Conviction through his petition. See Motion To Suppress State's Evidence attached as App. J.

5. Ineffective Assistance Of Counsel

Both the Sixth Amendment to the United States Constitution and article 1, § 22 (amendment 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings.

A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal. State v. Nicols, 161 Wn.2d 1, 9, 162 P.3d 1122 (2007). A claim of ineffective assistance of counsel presents a mixed question of fact and law reviewed de novo." State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

To establish ineffective assistance of counsel, the defendant must establish that his attorney's performance was deficient and the deficiency prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Deficient performance is performance falling "below an objective standard of reasonableness based on consideration of

all the circumstances." State v. McFarland, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995). The prejudice prong requires the defendant must show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment.

Second, the defendant must show that the deficient performance prejudiced the defense. This also requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Strickland, 466 U.S. at 687.

While there is a strong presumption that counsel's performance was reliable. State v. Studd, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999); State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). The first question in deciding whether Parker was denied reliable, effective representation is whether counsel acted accordingly when he failed to:

- 1) challenge the defective charging document, and the inaccuracies found therein, or the "to convict instructions" that omitted the word "and" which was replaced with the word "through" as argued in section 2 of this petition:

- 2) suppress the contents of Holliday's cell phone which were obtained in violation of Article 1 § 7 and used against Parker to gain the convictions as argued in section 3 of this petition; and

- 3) investigate the case thoroughly where he would have

found that Holliday was in jail during the date and time of the alleged prostitution and human trafficking incidences, and that the evidence taken from the cell phone was done without consent or court order.. See Petitioner's Affidavit App. 1-A.

Further, what is equally troubling about counsel's failure to perform, is counsel did not call witnesses that were willing to testify for Parker. In the Brett, case where counsel was ineffective; the court held that to provide constitutionally adequate assistance, "counsel must, at a minimum, conduct a reasonable investigation enabling [counsel] to make informed decisions about how best to represent [the] client." In re Brett, 142 Wn.2d 868, 16 P.3d 601 (2001)(citing Sanders v. Ratell, 21 F.3d 1446, 1456 (9th Cir. 1994).

It was obvious that Parker was having trouble with Mr. Wareham and his ability to try the case. Not only did Parker go on record about the breakdown in communication, counsel informed several people that they would be subpoenaed to testify for the defense but that never happened. Counsel even went as far as to tell witness Madison that he did not need to be subpoenaed. See Affidavits from Madison and Battles complaining about not being on any witness list. App. G.

Witness Parker, complained that counsel told her that she needed to think long and hard about testifying for her brother,

it is clear that counsel discouraged her and others from testifying for Parker. Why the discouragement? when she was only there as a character witness, however this came after the prosecutor threatened to put Parker's witnesses in jail. This act by the Prosecutor should have been challenged by the defense, but again counsel did little to help the case. See Ms. Parker's Affidavit App. G.

Moreover, even counsel's private investigator acknowledged that Parker received ineffective assistance of counsel, especially when counsel lied to him about being called as a rebuttal witness. See Email sent by Chris Mace App. G. Also RP's of the conflict of interest. App. K.

There was no legitimate trial strategy or tactic for not calling these witnesses when these were Parker's only witnesses. Hendrickson, 129 Wn.2d 77-78 supra. With a plethora of mistakes made by defense counsel, Parker is certain that had it not been for the errors the outcome of this case would have been different, in that with the defective charging document and evidence obtained in violation of our State and Federal Constitutions the prosecutor essentially had no case to try Parker for at least Promoting Prostitution and Human Trafficking [i]f not all of the alleged crimes. Hendrickson, 129 Wn.2d 61 supra. Thus ineffective assistance of counsel deprived Parker of his inherent right to a fair trial. In

re Brett, controls.

6. Actual And Substantial Prejudice

A [PRP] will be granted if the petitioner establishes actual and substantial prejudice resulting from a violation of [his/her] constitutional rights or a fundamental error of law. In re Benn, 134 Wn.2d 868, 884, 952 P.2d 116 (1998).

In this case actual prejudice attached when 1) the charging document misstated the facts of when Parker allegedly committed the crimes of Promoting Prostitution in the First Degree, and Human Trafficking in the First Degree, 2) the evidence obtained to gain the convictions were obtained in violation of Article 1 § 7 which stemmed from the fruit of the poisonous tree and 3) when counsel failed to investigate the case thoroughly, where any other lawyer worth his weight would have seen the errors and acted upon them by moving to dismiss the charges.

Substantial prejudice attached when Parker was given 50 years for the government violating his constitutional rights.

7. Remedy

Because Parker have provided this Court with affidavits, court records, and other documents, he have shown and established through case law that he was actually and substantially prejudiced by the courts zeal to try this case where the prosecutor had no

standing to do so in the absence of sufficient admissible evidence.
State v. Campbell, 103 Wn.2d 1, supra.

The remedy here, is for this Court to vacate the convictions of Promoting Prostitution in the First Degree and Human Trafficking in the First Degree. If the State objects, then this Court should require the State to make a prima facie showing of any compelling reason not to allow this remedy. If the State cannot do so, then this Court should vacate judgment and remand to Kitsap County Superior Court for complete dismissal of charges or new trial. If the State makes a prima facie showing, then this Court should remand for an evidentiary hearing on the point. See In re Hews, 99 Wn.2d 80, 660 P.2d 263 (1983) and In re Fleming, 129 Wn.2d 529, 532, 919 P.2d 66 (1996).

D. CONCLUSION AND PRAYER FOR RELIEF.

Based on the above errors found herein, this Court should vacate Parker's convictions of Promoting Prostitution in the First Degree and Human Trafficking in the First Degree, or whatever this Court may deem to be a proper remedy. In the alternative this Court should remand to Kitsap County Superior Court for a reference/evidentiary hearing.

Respectfully submitted,

C. Tucker
DATED this 7th day of July, 2014.

OATH OF PETITIONER

21.

PERSONAL RESTRAINT PETITION

STATE OF WASHINGTON

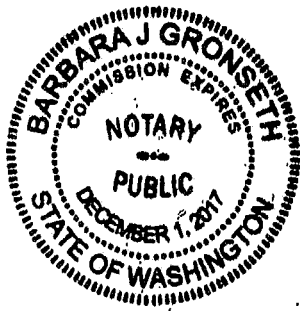
COUNTY OF CLALLAM

After being first duly sworn, on oath, I depose and say:
That I am the petitioner, that I have read the petition/brief,
know its contents, and I believe the petition/brief to be true.

A Parker
Signature

Anthony PARKER 776122
Name & Number

2014 SUBSCRIBED AND SWORN to before me this 7th day of JULY



Barbara J Gronseth
Notary Public in and for the
State of Washington Residing
at Clallam Bay
My commission expires Dec. 1, 2017

APP. A.

APPENDIX A.

I, Anthony D. Parker, an inmate who resides at Clallam Bay Correction Center do solemnly swear under the laws of penalty and perjury of the State of Washington that the following is true and correct to my knowledge;

That from the date of my arrest on April 13, 2013 to the date of my conviction by jury, I had received ineffective assistance of counsel. At no time did my assigned attorney Matthew Wareham conduct a meaningful investigation into my case, and refused to call witnesses on my behalf. When I complained about the dates on the information document, being wrong and inaccurate Matthew Wareham told me that there was no need to worry about it and that it did not matter. When I complained of the Holliday's cell phone being illegally confiscated he told me that the law allowed them meaning the police to take the phone and search it even without consent or an actual arrest.

I tried complaining to the court about my attorney not talking to me or visiting me in jail to try to at least put together a defense on my behalf, but the judge refused to inquire into the matter, even when my attorney complained that he had a conflict of interest and needed to withdraw the judge denied the request.

I believe had my attorney investigated my case and called

AFFIDAVIT CONT'

my witnesses I would not have been found guilty of the crimes alleged. And I also believe that had my attorney challenged the charging document or suppressed the evidence obtained from Johanna Holliday's cell phone I would not have been tried for Promoting Prostitution, Human Trafficking, and the other crimes.

Ineffective assistance of counsel denied me my right to a fair trial under the State and Federal Constitutions. And I would like this Court to review this claim to see the prejudice that my trial attorney caused.

Anthony D. Parker 7176122
Affiant's Signature/DOC #

Anthony D. Parker Pro Se
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

2014

SUBSCRIBED AND SWORN to before me this 7th day of JULY



Barbara J Gronseth
Notary Public in and for the
State of Washington Residing at
Clallam Bay My
commission expires Dec. 1, 2017